

**In the court of Shri Ravinder Singh Rana, PCS,
Judicial Magistrate Ist Class, Nakodar
UID No PBO513**

Case Number CHI 147/15
CNR PBJLA0-000172-2015
Date of Institution 25.03.2015
Date of order: 07.03.2018

State

Versus

Paramjit singh son of Chain Singh resident of village
Raipur Arriyan, PS Mehatpur, District Jalandhar
.....(Accused)

F.I.R. No.13 dated: 20.01.2015
Under Section 21 of Mines & Minerals Regulation Act 1957 &
Section 379 IPC & Sections 177,181,192, 192A,196 of M.V.
Act.
Police Station: Mehatpur.

Present:- Ms. Harpreet Kaur, A.P.P. for the State.
Accused on bail with Advocate Sh. RK Sidhu Adv

J U D G M E N T

1. The accused above named has been forwarded to this Court by the SHO of Police Station, Mehatpur to face the trial for commission of offence punishable Under Section 21 of Mines & Minerals Regulation Act 1957, Section 379 IPC & Sections 177,181, 192, 192A,196 of M.V. Act., having been allegedly committed by him.

2. The brief facts of the present case are that on dated 20.01.2015 HC Sukhdev Singh along with police party were present at Bus Stand Sangowal in connection with checking of bad elements and patrolling, where Sh. Narinder Pal Singh, BLEO came present and present one application to HC Sukhdev Singh. The said application was addressed

to SHO, PS Mehatpur and same was bearing no. M.O./Jalandhar SPL-1 dated 20.01.2015. It was submitted in the application that with regard to illegal mining of small mineral one tractor Ishar without number and number plate red in color along with trolley loaded with sand and the same was driven by accused Paramjit Singh. The said vehicle is apprehended at T Point Raipur Gujran by the mining team as the said person was going doing illegal mining by digging and transportation of sand belongs to Punjab Govt. In this way the said person has violated the provisions of Mines and Mineral (Development and Regulation Act 1957) section 21 of the Act. So the tractor trolley be impounded and case be registered against the above said person. From the contents of application offence u/s 21 Mining and Mineral Act 1957 was made out and at which HC Balwinder Singh started investigation after registration of FIR. During investigation accused was arrested and the tractor trolley along with trolley loaded with sand was taken into police possession vide separate memo. Site was inspected. Site plan was prepared. Statement of witnessed were recorded. On return to police station, case property was deposited with the MHC. The RC of the above said vehicle was got proved and the statement of concerned clerks were recorded. During investigation section 177,181, 192A,196 of M.V. Act were added in this case. After completion of investigation challan was prepared against the accused and presented in the court.

3. On appearance of accused in the Court, the copies of challan and the documents attached therewith were supplied to the accused free of

costs in compliance with the provisions contained in Section 207 Cr.P.C.

4. On a perusal of the challan with accompanying documents, a prima facie case punishable Section 21 of Mines & Minerals Regulation Act 1957 & Section 379 IPC & Sections 177,181,192, 192A,196 of M.V. Act was found to have been made out against the accused. A charge under the said Section was accordingly framed against the accused. The contents of the charge so framed were read over and explained to the accused in simple language to which he pleaded not guilty and claimed trial. As a result, the prosecution witnesses in the case were ordered to be summoned.

5. In order to prove its case, prosecution examined PW1 Balwinder Kumar, PW-2 Narinderpal, PW-3 ASI Sukhdev Singh and thereafter, prosecution evidence closed by order.

6. After closure of prosecution evidence, the accused was examined and his statement was recorded under section 313 of the Cr.P.C. in which the incriminating evidence appearing against him was put to him. The accused however denied all such allegations while claiming him to be innocent and having been implicated in a false case. He closed his defence evidence without leading any evidence.

7. I have heard the learned APP for the State, and the defence Counsel and have gone through the evidence on the file.

8. Learned APP for the State argued that on dated 20.01.2015 at about 4.30 pm in the area of PS Mehatpur, accused violated the provisions of mines and Mineral Act, 1957 by digging and transporting

illegally sand small mineral with the help of tractor Esher bearing no. PIK 7309 along with trolley loaded with sand without the permission of sanctioning authority and drove above said tractor trolley without license, without insurance, without permit, without registration certificate and without no. plate and further committed theft of the small minerals and sand belongs to Punjab Government. The prosecution has proved its case in the testimony of PW1 Balwinder Kumar, PW-2 Narinderpal, PW-3 ASI Sukhdev Singh, stepped into witness box and deposed against accused and proved their statements panchanma Ex.P1, reput Ex.P2, photographs Ex.P-3, complaint Ex.Pw-2/A, ruqa Ex,Pw-3/A, FIR Ex.PW-3/B, site plan Ex.Pw-3/C, arrest cum intimation memo Ex.Pw-1/B, recovery memo Ex.Pw-1/A, DTO letter along with its report Ex. PW-3/D and PW-3/E, copy of DL mark A, copy of RC mark B, application u/s 22 Mines Act, Ex,Pw-2/C. All the witnesses deposed against accused and corroborated and supported the prosecution version, therefore, he is liable to be convicted for the offence punishable Under Section 21 of Mines & Minerals Regulation Act 1957 & Section 379 IPC & Sections 177,181,192, 192A,196 of M.V. Act, particularly when, prosecution has proved its case against accused beyond any reasonable shadow of doubt. Learned APP for the state further argued that it is established that accused found transporting sand (small minerals) without the permission of the industrial department/mining department. Testimonies of the witnesses are fully corroborative on material points. The case of the prosecution stands fully proved in view of the statements of the witness. Finally, she prayed

that the present accused be convicted and punished accordingly.

9. In rebuttal, counsel for the accused argued that prosecution has miserably failed to prove its case against the accused. Prosecution story is a bunch of false facts only and accused in this case has falsely implicated by complainant because prosecution has failed to prove the identification of accused in this case at the spot. He further argued that there are major contradiction in the testimony of complainant and the prosecution story. He argued that no TIP was ever conducted by the police. He further argued that no independent witness has been examined by the prosecution regarding the alleged occurrence. He further argued that police agency fit accused in the present case falsely as he was not present at the spot. He further argued the evidence and documents on the police file cannot read in any manner because identification of alleged sand is not established as such and Panchama cannot look into for any purpose. He further argued that complainant has not proved on record his presence at the time of alleged occurrence. He argued that witness who accompany complainant at that day were neither cited nor examined in this case. The case property i.e. Sand not produced by prosecution in this case and the presence of alleged sand are also disputed. There is major contradiction in the prosecution story. It is argued that it is duty of the police to preserve the case property and prosecution witness stated different version qua sand in their cross examination. It is argued that no TIP was conducted in this case and mere photographs cannot look into for any purpose. The entire prosecution evidence is suspicious one. Finally,

he has prayed that accused is liable to be acquitted as no case has been made against him. The star witness of prosecution, namely, complainant has failed to establish his version on the file and other witnesses also failed to incriminating version against the accused. Rather, deposition of this witness comes to the rescue of accused as the same is against the prosecution version and is a hearsay one. The depositions of official witnesses cannot be taken into account for want of independent witness at the time of alleged incident. Moreover, there are discrepancies in the statements of above named witnesses, which show that witnesses are not reliable and they have made up a concocted story. In-fact, there is also no evidence available on record to connect the present accused with the commission of alleged offence. Lastly, it is prayed for acquittal of the accused.

10. The points for determination in this case before this court are as under:-

i) That on dated 20.01.2015 at about 4.30 pm in the area of PS Mehatpur, accused violated the provisions of mines and Mineral Act, 1957 by digging and transporting illegally sand small mineral with the help of tractor Esher bearing no. PIK 7309 along with trolley loaded with sand without the permission of sanctioning authority and drove above said tractor trolley without license, without insurance, without permit, without registration certificate and without no. plate and further committed theft of the small minerals and sand belongs to Punjab Government?

ii) Whether the prosecution has successfully proved its case beyond all reasonable doubt against the accused?

11. I have given my thoughtful consideration to the rival contentions of both the counsels. My findings on the points of

determination are as under:-

POINTS NO.1 AND 2

12. Both these points are being taken up together for the purpose of discussion and decision in order to avoid unnecessary repetition of facts and evidence. Moreover, these points are interlinked.

13. As per the case of the prosecution, accused was found by digging and transporting illegally sand small mineral with the help of tractor Esher bearing no. PIK 7309 along with trolley loaded with sand without the permission of sanctioning authority and drove above said tractor trolley without license, without insurance, without permit, without registration certificate and without no. plate and further committed theft of the small minerals and sand belongs to Punjab Government.

14. The perusal of record shows that present case was initiated against accused on written application Ex.PW2/A moved by Narinder Pal Singh BLEO (complainant in this case) to SHO, Mehatpur on dated 20.01.2015 at about 4.30 pm in the area of PS Mehatpur, accused violated the provisions of mines and Mineral Act, 1957 by digging and transporting illegally sand small mineral with the help of tractor Esher bearing no. PIK 7309 along with trolley loaded with sand without the permission of sanctioning authority and drove above said tractor trolley without license, without insurance, without permit, without registration certificate and without no. plate and further committed theft of the small minerals and sand belongs to Punjab Government. The record shows that

during the course of trial of present case tractor trolley has produced in the court and got identified by the complainant and other prosecution witnesses and its ownership is also shown to be recorded in the name of Harkrishan Lal son of Guranditter Ram resident of Near Abadi Sultanpura, Fezilka vide copy of RC as Mark B and vide Ex.PW3/D, PW3/E. The deposition of case properties i.e. tractors trolleys and sand in the police Malkhana also proved by the oral version of witnesses. The production of alleged sand has been exempted in this case by virtue of DDR entry no. 14 dated 08.02.2016 and Panchnama Ex.P1, rapat Ex.P2 and photograph Ex.P3. The complainant and investigation officer of the case fully corroborated to their testimonies regarding alleged recovery of sand from accused person and identification of accused at the spot. In his oral deposition PW2 particularly mentioned that at the time of alleged incident he apprehended the accused from the spot and further identify accused as driver of vehicle and as on asking royalty Parchi accused failed to show the same, he was arrested in this case by him. The conjoin reading of his evidence and evidence of other prosecution witness provides that they identified accused in the court as person apprehended at the time of alleged incident. Per contra, Accused person has failed to shutter the credibility of these prosecution witness in their cross examination and they fully stands on their version. Although, there is minor discrepancies in their statements qua the time of alleged occurrence but the same cannot fatal the entire case of prosecution whereas the transportation, recovery of sand as well as identity of accused person are

duly establish on record. Similarly, non-joining or non-examining of any independent or public witness cannot totally wash the prosecution case as where testimonies of witnesses, who have deposed during the trial, are otherwise found to be reliable, trustworthy and cogent, the said evidence cannot be disbelieved or discarded merely because the prosecution has failed to examine other witnesses allegedly present on the spot. Even otherwise, joining of independent witness is not the rule of law but rule of caution (**Satinder Singh @ Sunny vs State of Punjab 2015(3) RCR Criminal 627**) and statements of official witnesses should also be relied upon if those inspire the confidence (**Radha Bai vs State of Haryana 2015(2) RCR Criminal 798**) and their testimonies also carry some evidentiary value and cannot be discarded merely on the ground of their official designation (**Sanjay Kumar vs State of Haryana 2015(2) RCR Criminal 697**). Further, there is no oral version of prosecution witness which provides that from where accused was took the alleged sand, and neither such witness is cited or examined in this case. The deep perusal of witness of prosecution itself establish that neither IO or complainant was go to the place from where accused dig the sand and took into his possession and the accused person only apprehended while transporting the sand (small minerals). Thus, the alleged theft as well as allegation of digging sand not proved. It has duly established that accused person was not having permission or authority from the department to transport the sand (small minerals). No such Slip or letter was produced by the accused person in their defence. So, the fact of illegal transportation by accused

person is duly proved on record. Accused person in his defence has also failed to produce any license, insurance, permit, registration certificate and number plate issued any competent authority in his favor. Thus, he is also for punishment under M.V. Act.

15. In view of my decision on points of determination as the prosecution has duly bring home the guilt of accused qua illegal transportation of sand (small minerals), therefore, he is liable to be convicted for the offences punishable Section 21 of Mines & Minerals Regulation Act 1957 & Sections 177,181,192, 192A,196 of M.V. Act. Accordingly, I convict the accused for the said offence. Let he be heard on the quantum of sentence.

Pronounced in open court:

Dated: 07.03.2018

(Ravinder Singh Rana), PCS
Judicial Magistrate Ist Class, Nakodar.
UID No PBO513

Veerpal Kaur*

Quantum Of Sentence

Present: Ms. Harpreet Kaur, A.P.P. for the state.

Convict with Advocate Sh. RK Sidhu Advocate

16. Heard. The Convict prays for leniency while quantifying the sentence to be imposed upon him by presenting him as poor person and sole bread earner of his family and first offenders. Accused has further prayed that he has no source of income as he is very poor men, so lessor fine may be imposed upon him. On the other hand, Ld. APP for the State argued that the convict has committed very serious offences and do not deserve any leniency.

17. After hearing the rival contention and after giving careful thought to the prayer so made by the convict viz-a-viz facts of the case, age and antecedents of the Convict and gravity of offence proved to have been committed by him which is of socio economic in nature, I am not inclined to be unduly lenient towards the Convict and I am of the considered opinion that Convict is not entitled to concession of probation.

Accordingly, Convict is sentenced and is ordered to pay fine as under:-

Sr. No.	Under sections	Rigorous Imprisonment	Fine	In default
1	Section 21(1) of The Mines and Minerals (Development and Regulation) Act,1957	----	Rs.3,500/-	----
2.	Section 181Motor vehicles Act	----	Rs. 200/-	-----
3.	Section 192-AMotor Vehicle Act	-----	Rs.300/-	-----
4	Section 196Motor Vehicle Act	-----	Rs.200/-	-----

5	Section 192 Motor Vehicle Act	-----	Rs.200/-	-----
6	Section 177 Motor Vehicle Act	-----	Rs. 100/-	-----

Copy of the judgment be supplied to the Convict free of cost.

Bail bonds, surety bonds of accused and superdari bonds stand discharged. Case property be dealt as per rules. File be consigned to the judicial record room after due compilation.

Pronounced in the open court: (Ravinder Singh Rana)PCS
Dated: 07.03.2018 Judicial Magistrate 1st Class, Nakodar.
Unique Identity Code: PB0513

Veerpal Kaur*
Stenographer III

Case Number CHI 147/15
CNR PBJLA0-000172-2015

Present:- Ms. Harpreet Kaur, A.P.P. for the State.
Accused on bail with Advocate Sh. RK Sidhu Advocate

No DW present or examined. Accused closed defence evidence. Arguments heard. Vide my separate judgment of even date, the accused have been convicted, sentenced and fined as detailed therein. Find paid. File be consigned to the record room.

Pronounced in the open court: (Ravinder Singh Rana)PCS
Dated: 07.03.2018 Judicial Magistrate 1st Class, Nakodar.
Unique Identity Code: PB0513

Veerpal Kaur*
Stenographer III

