

Criminal Case No.105/S/IPC/2022/A



CNR No.GANGo80015072022

ORDER BELOW EXHIBIT C/1

(Delivered on this the 4th day of the month of August of the year 2023)

This order is being passed after hearing arguments before charge.

2. The case of the Prosecution is that on 05/04/2021 at Nirankal, Ponda, the Accused No.2 who was the owner of the Tipper Truck bearing No.GA-05-T-4269 was caught red handed while illegally transporting extracted laterite stones from survey No.136/o and 117/o of village Nirankal without any lease or license from the competent authority in his truck and Accused No.2 was caught red handed while illegally extracting laterite stone from survey No.136/o and 117/o of village Nirankal without any lease or license from the competent authority. Thus Accused Nos. 1 and 2 committed offence punishable under

Section 379 of IPC and Rule 3 of the Goa, Daman and Diu Minor Minerals Concessions Rules, 1985.

3. Heard Ld. APP P. Surlikar for State, Ld. Adv. V. Dessai for Accused No.1 and Ld. Adv. J. Lopes for Accused No.2. Perused the records and considered the arguments of the learned counsels.

4. It is the contention of Learned Advocate for Accused that the complaint with respect to the offences under Goa, Daman and Diu Minor Minerals Concession Rules, 1985 has to be filed by an authorised person and police report cannot be filed in respect of offences under the said Act as the Court can take cognizance only on a complaint and not on a police report. It is thus submitted that the cognizance of the offences is bad in law. It is also submitted that there are no statements on record to prima facie prove the involvement of the Accused in the crime. It is therefore submitted that the Accused are entitled for discharge.

5. Per contra, it is the contention of learned Assistant Public Prosecutor that the truck in which the

laterite stones were transported belong to Accused No.2 and that the equipments, machinery used for extracting laterite stones belongs to Accused No.1, the laterites stones were extracted illegally and being so there is sufficient material on record to frame charge against the Accused for offences punishable under Section 379 of the Indian Penal Code and Rule 3 of the Goa, Daman and Diu Minor Minerals Concession Rules, 1985.

6. Rule 64 of Goa Daman and Diu Minor Minerals Concession Rules, 1985 provides as follows :-

64. Cognizance of offences: - No court shall take cognizance of any offence punishable under these rules except upon a complaint in writing made by the competent officer or the inspecting officer.

7. Section 2(b) of Goa, Daman and Diu Minor Minerals Concession Rules 1985 defines “Competent Officer” to mean the Director of Mines, Government of Goa.

8. Section 2(e) of Goa, Daman and Diu Minor Minerals Concession Rules 1985 defines “Inspecting Officer” to mean Senior Geologist or the Senior Technical Assistant or the Assistant Geologist or the Technical Assistant in the Directorate of Mines or any other officer authorised by the Government to exercise all or such of the powers of the Inspecting Officer as the Government may specify.

9. Thus cognizance of an offence under Goa, Daman and Diu Minor Minerals Concession Rules, 1985 can be taken by a competent Court only on a private complaint made by the competent officer or the inspecting officer as provided under Rule 64 of Goa, Daman and Diu Minor Minerals Concession Rules, 1985. In the present case, police report is filed. Being so, this Court cannot take cognizance of the offence under Rule 3 of the Goa, Daman and Diu Minor Minerals Concession Rules, 1985 on the basis of a chargesheet submitted by the police.

10. It is the contention of learned Advocate for Accused No.2 that since the Court cannot take cognizance

of the offence under Rule 3 of the Goa, Daman and Diu Minor Minerals Concession Rules 1985, no cognizance can be taken of the offence under Section 379 of IPC as the cognizance is one and it cannot be split. In this regard, he has relied upon the case of **Seema Sarkar vs. The State; [1995] 1 CALLT 95 HC** wherein the Accused was charged for the offence under Section 379 of the Indian Penal Code and Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957. The complaint was lodged by Block Land and Land Reforms Officer, Bhatar as the authority under West Bengal Minor Minerals Rules, 1973 alleging inter alia that the Accused had unauthorisedly excavated land of ordinary clay for manufacturing bricks without any authorised licence from the Government and as such contravened Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 and Section 379 of the Indian Penal Code. The Hon'ble Calcutta High Court held that the complaint has been lodged by a person not being authorised to do so which cannot be sustained in law. The Court also held that if the offence as alleged under Section 379 of the Indian

Penal Code is dissociated from the allegation of excavation of earth without licence constituting an offence under Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 then there is no ingredient for offence under Section 379 of the Indian Penal Code against the Accused. Even if it is assumed that there is such an ingredient, then the order of taking cognizance is bad because cognizance is one and it cannot be split. If it is found that taking cognizance of offence is bad the other part of the offence for which cognizance has been taken cannot be sustained in law. As such the complaint was quashed by the Court.

11. It is to be noted that the aforesaid judgment of the Hon'ble Calcutta High Court has been reversed and set aside by the Hon'ble Supreme Court in the case of **State of NCT of Delhi v/s Sanjay in Criminal Appeal No.499/2011** decided on 04.09.2014. The Hon'ble Supreme Court held that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds

without consent, which is the property of the State, is a distinct offence under IPC. Hence, on receipt of the police report, the court can take cognizance of the offence under Section 379 of IPC without awaiting the receipt of the complaint that may be filed by the authorised officer for taking cognizance in respect of the violation of various provisions of the MMDR.

12. Thus, the Court can take cognizance of the offence under Section 379 of IPC if there is prima facie material on record.

13. The complaint dated 05/04/2021 of Assistant Geologist, Directorate of Mines & Geology states that the officials raided survey no.136/0 and 17/0 of village Nirancal of Ponda Taluka and at the time of inspection the team seized four power tiller machines which was engaged in illegal extraction of laterite stones and one truck was seized loaded with 300 laterite stones bearing registration No.GA-05-T-4269. The complaint is filed against unknown persons.

14. The Inspection Report dated 21/04/2021 prepared by the Directorate of Mines Geology has been produced on record. The said report states that at the site of illegal extraction of laterite dimension stones, there are 7 active pits and other inactive pits from which several laterite dimension stones have been extracted. In all the active pits it appears that labourers have just fled with all the machineries from the pits and implements are seen at pits and distinct tyre marks of truck and JCB is observed. The labourer's huts are seen around the site. Four power tillers machines at the site used in extracting laterite dimension stones are seized. The Truck bearing No.GA-05-T-4269 loaded with 300 laterite dimension stones was seized. The 4 stone cutting blades which were attached to power tiller machines were dismantled and 3 other spare blades were found at the site, total 7 blades were attached by the police. 3 cables attached to power tiller machine were also seized.

15. According to the Prosecution, Accused No.2 is the owner of the Tipper Truck bearing No.GA-05-T-4269

which was used for transportation of laterite stones and that the Accused No.1 is the owner of the implements used for extracting the laterite stones.

16. There are no statements of any witnesses stating that the Accused were seen extracting laterite stones or that the Accused were seen at the site or that the accused was driving the truck used for illegally transporting laterite stones. There is no material on record to prima-facie prove the involvement of the Accused in the crime. As such there is no prima facie material on record to frame charge against the Accused.

17. It is therefore that both the Accused are discharged of the offences under Section 379 of the Indian Penal Code and Rule 3 of the Goa, Daman and Diu Minor Minerals Concession Rules 1985.

Bonds to be furnished by the Accused in compliance of Section 437-A of the Code of Criminal Procedure, 1973, as amended.

Proceedings closed.

Pronounced in the Open Court.

(Reina S. Fernandes)
Judicial Magistrate, First Class
A- Court, Ponda.

SS/-