

Accused No.1, 2, 6 and 8 are absent. EP filed.

Accused No.3 and 4 are present and submits that, they wants to plead guilty.

2. On perusal of the records show that, police have registered FIR against the accused No.1 to 9 under Section 21(1) of MMRD Act and Section 379 of IPC. After registration of FIR, it is said that the police have investigated the matter and found sufficient materials against the accused persons. Hence, concerned police have files charge sheet against the accused persons for the offences punishable under Section 379 of IPC and under Section 21(1) of MMRD Act. After filing of charge sheet, concerned jurisdiction court had taken cognizance of the offence punishable under Section

379 of IPC and also under Section 21(1) of MMRD Act.

3. It is relevant to note here that, the police have no authority to register FIR for the offence punishable under MMRD Act and to conduct investigation. MMRD Act specifies that, an authorized officer has to file private complaint before the magistrate or court in order to invoke the provisions of MMRD Act. Since, the police have registered FIR, conducted investigation and filed charge sheet for the offences punishable under 379 of IPC and under Section 21(1) of MMRD Act, the proceedings under MMRD Act is vitiated. Though, the court initially has taken cognizance for the offence punishable under section 21(1) of MMRD Act, taking of the cognizance is itself is bad under the law. However, the police have also filed the charge sheet against the accused No.3 and 4 for the offence punishable under section 379 of IPC which is triable by this court and taking cognizance of offence punishable under section 379 of IPC holds good. Accordingly, the charge is framed against the accused No.3 and 4 for the offence punishable under Section 379 of IPC only.

Charges read over and explained to the accused No.3 and 4. Accused No.3 and 4 pleads

guilty. Pleading of guilty of the accused No.3 and 4 appear to be voluntarily. Thus, the said plea is accepted. Accordingly, I proceed to pass the following.

### **ORDER**

Acting under Section 241 of Cr.PC, accused No.3 by name Mahantesh S/o Devindrappa Marabe and accused No.4 by name Mallesh Lalappa Haralayya are hereby convicted for the offence punishable under Section 379 of IPC.

### **APPLICATION OF P.O. ACT.**

The offence is theft of sand, which is belonging to the government. Hence, I am not inclined to invoke the provisions of Probationary of Offenders Act. Therefore, I proceed to hear the accused No.3 and 4 on sentence.

Heard. The learned APP and accused No.3 and 4 on sentence.

The accused No.3 and 4 submitted that, they are poor villagers, illiterate and their family members are depended upon them. Therefore, prayed to impose only fine. On the other hand, the learned APP submitted that, accused No.3 and 4

have committed theft of sand which is a grave offence and prayed to impose maximum sentence and fine.

Though, the accused No.3 and 4 has committed theft of sand, on looking into the financial capacity and looking into the fact that, their whole family is depended on them, I, feel that, imposition of maximum fine would be sufficient to meet ends of justice. Accordingly, I proceed to pass the following.

**ORDER**

Accused No.3 and 4 are sentenced to pay fine of Rs.5,000/-each. In default of payment of fine, accused No.3 and 4 shall under go simple imprisonment for 90 days.

Reissue NBW to accused No.7 and notice to surety.

Call on 22.06.2024.

Senior Civil Judge and JMFC.,  
Aland.