



Sessions Case No.58 of 2019.
State of Maharashtra Vs.
Mahesh Parmeshwar Prasad & Ors.
CNR No.MHRG150008542019

:: ORDER PASSED BELOW EXH.27 ::

The present application has been filed on behalf of the prosecution by Ld. APP Shri. Mahakal under Section 228(1) (a) of Cr.P.C. (New U/s.251 (1) of BNSS, 2023) for transfer of case to Ld. JMFC, Mahad.

2. Prosecution alleges that accused in furtherance of their common intention excavating and transporting sand without permission of the State Government, thereby committed offences punishable under Section 379 r/w. 34 of the IPC and Section 21(1)(2) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'MMDR Act') and Section 131/194 of Motor Vehicle Act, 1988.

3. Ld. APP submitted that as per provisions of Section 22 of MMDR Act, no Court shall take cognizance of any offence punishable under this MMDR Act or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

4. Ld. APP submitted further that there is complete bar on cognizance by any Court unless there is complaint filed by authorized officer. He submitted that in the present case cognizance was taken on the basis of police report. Thus,

cognizance taken by was in violation provisions Section 22 of MMDR Act. Hence, this Court have no jurisdiction to try offences punishable under MMDR Act. The remaining offences are u/s.379 and section 113/194 of MV Act, which are triable by Ld. JMFC. Therefore, prayed for transfer of present case to Ld. JMFC Court for trial of offences u/s. 379 of IPC. In support of his contention he relied on the case of **State of NCT of Delhi Vs. Sanjay, 2014 (9) SCC 772**. In this case Police suo moto registered FIR for offences punishable u/s. 379/114 of IPC and section 21(4) of MMDR Act, for illegally removing and selling sand. The Hon'ble Supreme Court held that cognizance in respect of offences punishable u/s. 21 of MMDR Act cannot be taken in violation of section 22 of MMDR Act, but there is no bar to the Magistrate Court to proceed with offence punishable u/s. 379 of the IPC and Section 131/194 of Motor Vehicle Act, 1988.

5. Ld. Advocate for accused, filed his say and submitted that necessary order may be passed. After considering contention of both the sides following points arise for my determination and my finding thereon are as under.

Sr. No.	Points for determination	Findings
1.	Whether the cognizance of offences under MMDR Act taken on police report is not sustainable in law?	No.
2.	What order?	As per

		final order
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REASONS

As to point No.1 & 2 :

6. In the present case FIR was lodged by Circle Officer of revenue department in respect of illegal excavation and transportation of sand. The informant Circle Officer is authorized by State Government through Notification. After investigation chargesheet was filed and cognizance was taken on the basis of charge-sheet. The case was committed to this for Court for trial, as offences under MMDR are exclusively triable by Special Court. The accused has not raised any grievance as regards failure of justice due to cognizance taken on the basis of police report.

7. The legal position in this regard has been clear by the Hon'ble Supreme Court in case of **Pradip S. Wodeyar Vs. State of Karnataka, 2021 SCC Online SC 1140**. In this case cognizance was taken by Special Court, on the basis of report filed by Special investigation Team without case has been committed by Magistrate. The petitioner therein contended that as there is clear bar under Section 22 of MMDR Act for taking cognizance in absence complaint by authorized person, the cognizance taken under said Act is abused of process of law. Hence, filed quashing petition before Karnataka High Court which was rejected and against said order filed petition before the Hon'ble Supreme Court.

8. In Pradip (*Supra*) FIR was registered by the Lokayukta Police, signed by Sub-Inspector and information was furnished by Special Investigation Team (SIT) which was duly authorized. The Hon'ble Supreme Court held that the requirement of section 22 of the MMDR Act was satisfied in substance and the bar under section 22 of MMDR Act not attracted. On this fact the Hon'ble Supreme Court concluded that cognizance taken by Special Court did not suffer from lack of jurisdiction and even assuming any procedural irregularity, the same was protected under section 460 of the Cr.P.C., in absence of any demonstrated failure of justice. Further held that, where cognizance was taken by Special Court under section 190(1)(b) of Cr.P.C. on Police report based on information furnished by authorized agency and where offences arise out of same transaction the Special Court is legally empowered to conduct a joint trial subject to section 220 of the Cr. P. C.

9. The ratio of **Pradeep S. Wodeyar**(*Supra*) recognizes that, jurisdiction of the Special Court is not ousted merely because cognizance is taken on police report when authorized officer of State has given information.

10. In Sanjay(*Supra*) the Hon'ble Supreme Court was concerned with a case where cognizance was taken under MMDR Act solely on the basis of Police report without any involvement of or information from an authorized officer hence cognizance held to be unsustainable, however prosecution for IPC offence was permitted. On the contrary, in Pradeep(*supra*)

the Hon'ble Supreme Court clarified that where prosecution machinery was set in motion by authorized agency and cognizance taken on police report u/s.190(1)(b) Cr.P.C., founded upon such authorized information, the requirement of section 22 of MMDR Act stands satisfied. The Court further held that Special Court has jurisdiction to take cognizance and to conduct joint trial of offences under MMDR Act and other offences arising from same transaction as permissible u/s.220 of Cr.P.C., since there is no express or implied exclusion of its applicability under MMDR Act.

11. In Sanjay(supra) the Hon'ble Supreme Court held that unauthorized police action cannot be used to circumvent section 22 of MMDR Act, however in Pradeep(supra) held that authorized initiation of proceeding even when culminating in police report does not vitiate cognizance and any procedural irregularity is curable in the absence of demonstrated failure of justice.

12. In the present case concerned revenue officer was duly authorized by Government Notification to initiate prosecution against person involved in illegal excavation and theft of sand. There is no challenge raised by accused to the competence of said revenue officer. Further, criminal law set in motion on the basis of information such authorized revenue officers and the subsequent police report was filed upon investigation thereof. In view of law laid down by the Hon'ble Supreme Court in Pradeep(supra) such authorized initiation of

proceedings satisfies requirement of section 22 of MMDR Act and cognizance taken by Special Court on the basis of police report under section 190(1)(b) of Cr.P.C. cannot be held to be without jurisdiction. The Special Court is competent to try offences jointly in terms of section 220 of Cr.P.C. and there exist no express or implied statutory bar MMDR Act to such joint trial.

13. The principle laid down in Sanjay(supra) is applicable to the cases where cognizance under MMDR Act is sought to be taken in complete absence of involvement of an authorized officer, which is not the situation here. Therefore, reliance placed on Sanjay(supra) is misplaced.

14. The accused has not challenged cognizance taken on the basis of police report, so also not pleaded failure of justice. The accused neither challenged authority of revenue officer nor alleges cognizance taken by Court has caused any prejudice to their defence. Jurisdictional objection is ordinarily to be raised by the party alleging prejudice and not by prosecution.

15. In absence of any plea or proof of failure of justice by the accused and in view of the law laid down in Pradeep(supra) the cognizance taken on the basis of police report does not warrant any interference. This Court find no merits in the application seeking transfer of the case. In view of the precedent laid down by the Hon'ble Supreme Court in Pradeep(supra) this Court is of considered opinion that Special Court is competent to take cognizance and try the offences jointly and no jurisdictional infirmity is made out warranting

transfer of the case to the Magistrate Court. Hence, I answer point no.1 in the negative. In view of aforesaid discussion, I proceed to pass following Order.

ORDER

The application (Exh.27) is hereby rejected.

Sd/-

Mangaon.

(M. K. Patil)

Date : 19.01.2026.

Addl. Session Judge, Mangaon.