



CNR No. MHSI070001472024
Order passed below Exh. No. 30
in R.C.C.No. 14/2024

The present application has been filed by the learned Assistant Public Prosecutor (APP) under Section 323 of the Code of Criminal Procedure seeking transfer of the present case to the Court of Sessions on the ground that the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 are attracted.

2. It is the contention of the learned APP that the accused has been charged for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code. It is further contended that on perusal of the record and the evidence brought on record, the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 are attracted and as per Section 30-B of the said Act, the offence is triable by the Special Court, i.e., the Court of Sessions. Therefore, it is prayed that the present matter be committed to the Court of Sessions under section 323 of the Code of Criminal Procedure.

3. The said application has been resisted by the accused by filing a reply at Exh.31. It is contended that as per Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, no court shall take cognizance of any offence punishable under the said Act unless a complaint in writing is made by a person authorized in this behalf by the Central Government or the State Government. It is further contended that the present charge-sheet

has been filed by Malvan Police Station and the police officers are not specially authorized officers under the said Act. Therefore, the accused have prayed that the application be rejected.

4. Heard the learned APP for the State and the learned Advocate for the accused. Perused the record.

5. Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 provides that no court shall take cognizance of any offence punishable under the said Act or any rules made thereunder except upon a complaint in writing made by a person authorized in this behalf by the Central Government or the State Government. Therefore, it is clear that in order to attract the provisions of the said Act, a written complaint must be filed by a person duly authorized by the Central Government or the State Government.

6. In the present case, admittedly the charge-sheet (final report) under Section 173 of the Code of Criminal Procedure has been filed by the police. Such a report cannot be treated as a complaint as defined under Section 2(d) of the Code of Criminal Procedure. Moreover, the same has not been filed by any person authorized by the Central Government or the State Government under the provisions of the said Act. Therefore, the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 are not attracted in the present case.

7. The learned APP has relied upon the judgment in the case of ***State of NCT of Delhi vs. Sanjay, reported in AIR 2014 SCW 5487***. On perusal of the said judgment, it has been held that the bar under Section 22 of the MMDR Act applies only to prosecution under the Act and does not prohibit the police from prosecuting offences of theft of minerals under the Indian Penal Code. Thus, the provisions of the MMDR Act would be attracted only when a complaint is filed by a duly authorized officer under the Act and not otherwise. The said authority is not applicable to the case in hand. In view of the above discussion, the present application is devoid of merits. Therefore the application is liable to be rejected. Hence, the following order:

ORDER	
1.	The application at Exh. 30 stands rejected.
	(Pronounced and dictated in open Court.)

Place : Malvan
Date : 13/03/2026

M.K.Fakih
Judicial Magistrate F. C., Malvan.