



Court: Judicial Magistrate, Sarwar, District Ajmer

Presiding officer : **Kartik Sharma (R.J.S.)**

Criminal regular no.: 162/19

CIS no. : 81/19

State of Rajasthan

... Prosecution

versus

kailash S/o shree Mohanlal R/o Arniya goda P.S. Shahpura,
Distt.Bhilwara

...Accused

Offence u/sec 379 I.P.C., 4/21 MMRD Act,

Presence:

Assistant Public Prosecutorlearned counsel for prosecution

Adv Pradhan lal Jaat..... learned counsel for accused

JUDGEMENT

Date: 01/04/2026

1. The brief facts of the case is that Station house Officer Rajendra Singh, Sub Inspector along with his team left from the police station at 10.12 PM for evening patrolling and crime control and reached at 10.15 PM. But when he reached in front of Tehsil Sarwar, a dumper was seen coming from Kekri side, which was stopped by Police Officer along with his team by signaling with his hand, on which the dumper driver took the dumper a little ahead and stopped it and on seeing the uniformed police team, the driver got down from the dumper and started running, whom Police Officer Rajendra Singh Sub Inspector along with his team caught with great difficulty and when they looked inside the dumper, the dumper was filled with illegally mined bajri, on asking the driver his name and address, he told his name to be Shri Kailash son of Shri Mohan Lal, caste Nayak, age 32 years, resident of Arniya Goda Police Station Shahpura, District Bhilwara. When asked to show the challan/royalty and license of the bajri loaded in the said dumper, he said that he did not have it. The illegal theft and transportation of mineral bajri by the said driver Mr. Kailash without challan/royalty (issue) and without license, the case falls under the category of crime 379 Bhasas and 4/21 M.M.R.D. Act. The said dumper number RJ-28-GA-1912 along with illegal mineral bajri was seized as evidence through a report and the accused Mr. Kailash son of Mr. Mohan Lal caste Nayak age 32 years resident of Arniya Goda police station Shahpura district Bhilwara was arrested through a report in person and after completing the on-the-spot proceedings, the station officer along with accompanying contingent along with the accused along with the seized dumper number RJ-28-GA-1912 came to the police station for illegal bajri mining. The seized vehicle was parked in the police station premises for security purposes, and the accused was handed over to a sentry in the lock-up. Therefore, case number 345/16 was registered under sections 379 of the Indian Penal Code and 4/21 of the MMRD Act.,



2. The police after their investigation, submitted a charge sheet against Kailash for the offence of section 379 IPC, Section 4/21 MMDR on 06/03/2019 . The court took cognizance of the said offences on the same date .
3. On 17 march 2020 the charge under section 379 IPC Section 4/21 MMDR Act Act has been separately framed and read over to accused. The accused denied the allegation and demanded trial.
4. The prosecution produced and examined following persons as part of their prosecution evidence:

PW1	Rameshwar lal
PW2	Kartar singh
PW3	Lakshmi narayan
PW4	Ramniwas
PW5	Ganpat lal
PW6	Rajendra singh

5. The prosecution has produced and exhibited the following documents in order to prove their case:

EX P-01	Search and seizure memo
EX P-02	Arrest memo
EX P-03	Naksha mauka
EX P-04	Jamabandi
EX P-05	Naksha trace
EX P-06	Malkhana register
EX P-07	Rojnamcha report
EX P-08	FIR
EX P-9	Letter by mining department regarding deposit of fine
EX P-10	Rojnamcha report
EX P-11	Rojnamcha report

6. the statement of accused under section 313 CrPC has been recorded where accused denied the evidence adduced against him. The accused didn't wish to produce defence evidence. The file was later listed for final arguments.
7. Final arguments were heard. The learned Assistant public prosecutor stated that the accused were transporting illegal bajri in contravention of rules made by mines and minerals department. The accused didn't possess any valid documents to show his title over the seized bajri. The accused has stolen the bajri from the possession of the State. The prosecution has established its case beyond reasonable doubt against the accused hence demanded maximum sentence for the accused.

In reply, the learned counsel for accused has stated that no prior permission was sought from the mines and minerals department by the police officials. The



investigation officer completed his investigation without involving any independent witness. No FSL test was conducted to ascertain that the seized article was bajri only. The prosecution has failed to establish its case beyond reasonable doubt hence prayed the court to acquit and release the accused.

8. After hearing both the parties , the point of determination before the court is that **“Whether Kailash has committed the said offence under section 379 IPC, section 4/21 MMDR Act?”**
9. In order to decide the above mentioned point of determination , the court has to determine that **“ Can offence under section 379 IPC and section 4/21 MMDR Act could be tried together?”**
10. To answer that we shall first refer in brief the relevant provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Code of Criminal Procedure. Section 4 of the Act puts a restriction on mining operation or prospecting mining operation by any person except under a lease or licence. Section 4 reads as under:-

“4. Prospecting or mining operations to be under licence or lease. (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder: Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement. Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956. Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease.”

11. From a bare perusal of Section 4, particularly Section 4(1A) would show that there is a total restriction on transportation or search of minerals otherwise than in accordance with the provisions of the Act and the rules



made thereunder. The next relevant provisions are [Sections 21](#) and [22](#) of the Act. [Section 21](#) reads as under :-

“Penalties 21. (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of [section 4](#) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty- five thousand rupees, or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of [section 4](#), such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in [the Code of Criminal Procedure, 1973](#), an offence under sub-section (1) shall be cognizable.”

12. [Section 21](#) is a penalty provision in case of contravention of [Section 4\(1A\)](#) of the Act and is punishable with imprisonment for a term which may extend to two years. Sub-section 3 of Section 21 would show that the State Government or any other authority authorized by the State Government may obtain the help of police to evict the trespassers from the land who is doing mining activity in contravention of the provisions of the Act. Sub- [section 4](#) further empowered the officer or an authority specially empowered in this behalf to seize any tool, equipment, vehicle or any other thing which are used by any person who illegally or without any lawful authority erases, transports any minerals from any land. Those minerals, tools, equipment or vehicle or any other thing so seized shall be confiscated by the order of the court competent to take cognizance and shall be disposed of in accordance with the direction of such court as contemplated under sub- section 4(A) of Section 4 of the Act. Sub-section (6) of [Section 21](#) has been inserted by an [Amendment Act](#) of 1986 whereby an



offence under Sub- section (1) of this Section has been made cognizable. [Section 22](#) which is very relevant for the instant case needs to be quoted hereinbelow :-

“22. Cognizance of offences No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.”

13. Reading the aforesaid provision would show that cognizance of any offence punishable under the Act or the Rules made thereunder shall be taken only upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government.

14. [Section 23\(B\)](#) confers power to any gazetted officer of the Central or State Government authorized on that behalf to make search of minerals, documents or things in case there is a reason to believe that any mineral has been raised in contravention of the Act or the Rules made thereunder. While making search provisions of [Section 100](#) of Code of Criminal Procedure has been made applicable to every search.

“23B. Power to search --. If any gazetted officer of the Central or a State Government authorised by the Central Government [or a State Government, as the case may be, in this behalf by general or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or rules made thereunder or any document or thing in relation to such mineral is secreted in any place [or vehicle,] he may search for such mineral, document or thing and the provisions of [section 100](#) of the Code of Criminal Procedure, 1973 shall apply to every such search.”

15. Looking into the provisions [the Code](#) of Criminal Procedure, 1973 the relevant provisions need to be referred hereunder. [Section 2\(c\)](#), [2\(d\)](#) and [2\(h\)](#) define cognizable offence, complaint and investigation which reads as under :-

“2(c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

2(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

2(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;”

16. [Section 4](#) provides that all offences under [the Indian Penal Code](#) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the said Code. Sub-section (2) of [Section 4](#) provides that all offences under any other law shall be inquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment regulating the mining or place of investigation, inquiry or trial of such offences. Coming to the provisions of [Section 41](#) of the Code, it will show that a police officer without an order of Magistrate and warrant can arrest any person



who commits a cognizable offence. The Court may also arrest any person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exist that he has committed a cognizable offence punishable with imprisonment for a term which made less than seven years.

17. Chapter 11 [of the Code](#) confers very important power and duty upon the police officer to take preventive action in certain cases. [Sections 149, 150, 151](#) and [152](#) of the Code are worth to be referred to and quoted hereinbelow :-

“149. Police to prevent cognizable offences – Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Information of design to commit cognizable offences – Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent the commission of cognizable offences – (1) A police officer, knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or any other law for the time being in force.

152. Prevention of injury to public property.- A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.”

18. Perusal of aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law.
19. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting persons under [the Indian Penal Code](#) where the offences committed by persons are penal and cognizable offence. [Section 22](#) of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any rule made thereunder except upon a complaint made by a person authorized in this behalf.
20. Hon’ble supreme court of India in the case of ***State of NCT of Delhi v Sanjay,(2014) 9 SCC 772*** held that:

68. There cannot be any dispute with regard to restrictions imposed under the [MMDR Act](#) and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of [Section 4](#) and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute



that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of [Section 4](#) and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in [Section 22](#) of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of [Section 4](#) of the Act and not for any act or omission which constitute an offence under [Indian Penal Code](#).

69. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is laible to be punished for committing such offence under [Sections 378 and 379](#) of the Indian Penal Code.

70. From a close reading of the provisions of [MMDR Act](#) and the offence defined under [Section 378, IPC](#), it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of [Section 4](#) of the Act is an offence punishable under [Section 21](#) of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft.

71. Hence, merely because initiation of proceeding for commission of an offence under the [MMDR Act](#) on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under [the Code](#) of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under [Section 173, Cr.P.C.](#) before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in [Section 190 \(1\)\(d\) of the Code](#) of Criminal Procedure.

21. So in the light of above mentioned facts, the court is of the opinion that accused cannot be prosecuted under section 4/21 of MMDR Act because the complaint was not lodged by officer in pursuance of the said Act. **The accused Kailash are hereby cannot be tried for the offence of Section 4/21 od MMDR Act.**

22. In the light of above mentioned facts, it is clear that the accused could be tried for the offence under section 379 IPC.

23. The prosecution states that the accused were mining and transporting Bajri in the tractor-trolly and they possesses no documents regarding royalty or ravanna about such bajri. The conduct of accused makes it clear that the said bajri is a result of illegal mining. All the land and minerals are primarily in the possession of state itself and mining and transport of such mineral without valid permission of state amounts to theft.

24. The complainant Mr Rajendra singh was examined as PW 06 in court. During his examination in chief , he reiterated the facts of the FIR and stated that I have assumed the post of Station House Officer at Police Station Sarwad on 09.12.2017.. That day I, Rameshwarlal ASI, Constable Kartar and government jeep driver Raghunath left the police station at 10.12 PM for cycle patrol and reached in front of Tehsil Sarwad at 10.15 PM when



we saw a dumper coming from Kekri side. I and my accompanying party stopped it by signaling with my hand. The dumper driver stopped the dumper ahead and started running away after getting down from the dumper. The accompanying party caught him. When we saw the dumper, it was loaded with gravel. When asked the name and address of the dumper driver, he told his name to be Kailash son of Mohan Nayak, resident of Araniyaghoda Police Station Shahpura District Bhilwara. When asked about the challan, royalty and license for the gravel loaded in the dumper, he said that he did not have it. For illegal mining of gravel and transporting it without challan, the dumper along with the illegal gravel was seized on the spot through a report. The dumper's number is RJ 28 GA 1912. Accused Kailash was arrested on the spot through a report in front of a witness. A case was registered in the presence of the accused along with the dumper and illegal gravel at the police station and the dumper and illegal gravel was safely parked in the police station premises. The content report is Exhibit P7 on which my signatures are from A to B. The Chalk FIR is Exhibit P8 on which my signatures are from A to B. The seizure report of the dumper and illegal gravel is Exhibit P1 on which A to B are signed by Kartar Constable, C to D by accused Kailash, E to F by Raghunath Constable, G to H by me. The report of arrest and personal search of accused Kailash is Exhibit P2 on which A to B are signed by Kartar Constable, C to D by accused Kailash, E to F by Gunath Constable, G to H by me. After registering the case, the investigation of the case was entrusted to Radhamohan, Head Constable, who recorded my statement. On 10.12.2017, Radhamohan, Head Constable, prepared a map of the incident site, Exhibit P3, under my guidance. The signatures are A to B of Kartar, C to D of Raha Nath, E to F of me, and G to H of Radhamohan. After investigation, Radhamohan, Head Constable, considered the charges against accused Kailash, son of Mohanlal Nayak, resident of Arniya Ghoda, under Section 379 of the Indian Penal Code and Section 4/21 of the MMRD Act to be proven and presented the file before me. The file was examined. The documents on the file include Exhibit P9, an application to the Mineral Engineer, Mines and Geology Department, Sawar, signed by me from A to B. The spot map and Jamabandi are Exhibit P4 and Exhibit P5. The certified copy of the warehouse register is Exhibit P6A, signed by me from A to B. The certified copy of the diary is Exhibit P10 and Exhibit P11, signed by me from A to B. After getting the challan order in the observation file, charge sheet number 320/17 was prepared and the charge sheet was presented in the court

On cross examination he stated that also said that the dumper was seen coming during patrolling. **It is correct to say that the Mineral Department has not filed a separate case in this matter.** It is correct to say that in the action taken by me, only police personnel have been made witnesses. Ajkhud said that there were no other independent witnesses present there. **I did not get the gravel tested by any mineral experts on the spot. I did not do any further investigation, later further investigation was done by another officer.** It is correct to say that I did not get the material weighed on the spot.

25. Witness PW 01 Rameshwar lal was a witness of the scene of incident who during his examination in chief , he reiterated the facts of the FIR. **On cross examination he stated** There were numbers inscribed on the number plate at the front and back of the dumper. I am not aware of what else was written on it. I am not aware of its colour. **I am not aware whether the police station officer had informed the mining department from the spot or not.** It is true that the seizure of the dumper was made in my presence. My signature is not there nor was I made a witness in the seizure. **It is true that there is no signature of any independent witness on the seizure.** It is true that the police station officer and I had seen illegal gravel being transported in the said dumper. I am not aware from where it was loaded
26. witness PW 02 Kartar singh was a witness of the scene of incident who during his examination in chief , he reiterated the facts of the FIR. **On cross examination he stated** On December 9, 2017, he left the police station at approximately 10:12 PM. **It is correct to say that I did not know where the driver had stolen the gravel from, nor did I see him mining the gravel. I cannot say whether the police station officer had contacted the**



mining department. Whether or not the Mining Department was informed to call the accused to the scene. It is correct to say that the Mining Department was not present at the scene. It is correct to say that I did not question the accused regarding the royalty and challan for gravel. It is correct to say that SHO Rajendra conducted an investigation regarding the royalty and challan for gravel. It is correct to say that I conducted the spot survey, personal search, vehicle seizure, and arrest. It is correct to say that when the police go out on any official duty, their arrival and departure are recorded. **I cannot tell today how much gravel was loaded in the seizure vehicle.** It is correct that if the police went to the scene on 10.12.2017 for spot survey proceedings, their departure and return records are not recorded. **It is correct to say that all the police personnel have signed as witnesses on the spot map (Exhibit P3), arrest report (Exhibit P2), personal search report (Exhibit P1).** It is correct to say that there are hotels and shops near the seizure site. It is correct to say that no investigation was done by me in relation to Section 379 IPC and 4/21 MMRD Act in the case at hand. It is correct to say that I have duly carried out my work as per the instructions of the Investigating Officer and SHO

27. witness PW 03 Lakshmi narayan was the Patwari who establishes the jamabandi EX P05 and naksha trace EX P06. On cross examination **he admitted that he has not visited the scene of crime. He donot know in which matter the police officials has seeked the jamabandi and naksha trace.**

28. Witness PW 04 Ram niwas **turns hostile and denies the fact that at time of crime, accused kailash has been driving his dumper.** Witness PW 05 Ganpat lal establishes that the seized dumper and gravel has been deposited to Police station's Malkhana under his writing.

It is also noted that the investigating officer of this case died during the proceeding so his statements were not recorded.

29. It is well founded in criminal jurisprudence that the prosecution is under an obligation to prove its case against the accused beyond reasonable doubt. The standard of proof to be adopted in criminal cases is not merely preponderance of probabilities but proof beyond reasonable doubt on the basis of cogent, convincing and reliable evidence. It is also well settled that in case of doubt, the benefit must necessarily be allowed to the accused. . In view of the discussion above, this Court is unable to accept that the prosecution has proved its case beyond reasonable doubt for offence under section 379 IPC and section 4/21 of MMDR Act.

ORDER

30. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has failed to prove its case beyond all reasonable shadow of doubts and the benefit of doubt ought to be granted to accused, who is entitled to be exonerated of the charge against him in the present case.

Accordingly, accused Kailash is hereby found **not guilty** of the offence punishable under Section 379 IPC, and is hereby **acquitted** of the offence punishable under Section 379 IPC.



State v Kailash
Criminal regular no.: 81/19
Judgement Date: 01/04/2026

Accused Kailash is hereby found **not guilty** of the offence punishable under Section 4/21 of MMDR Act, and is hereby **acquitted** of the offence punishable under Section 4/21 of MMDR Act.

(Kartik Sharma)
Judicial magistrate ,Sarwar
Dist. Ajmer

31.The Judgement has been Pronounced, Signed and Sealed in open court today on 01/04/2026.

(Kartik Sharma)
Judicial magistrate ,Sarwar
Dist. Ajmer