

**IN THE COURT OF SHRI BARJINDER PAL SINGH, ADDL.
SESSIONS JUDGE, LUDHIANA (UID NO.PB-0185)**

CIS No. SC / 501 / 2019

Date of Institution: 03.06.2019

CNR No. PBLD-0102-1002-2019

Date of Decision: 06.07.2026

State of Punjab

Versus

Harmeet Singh son of Harnek Singh, r/o H. No.5, Street No.4, Jai Singh
Nagar, Rahon Road, Ludhiana.

.....Accused.

FIR No.161 dated 16.07.2017

**Under Sections: 379 Indian Penal Code and
21 Mining & Minerals (Regulation and
Development), Act, 1957**

Police Station: Meharban, Ludhiana

**(Case committed by the court of Sh. Palwinder
Singh, PCS, Judicial Magistrate, 1st Class, Ludhiana
vide commitment order dated 20.05.2019 qua the
accused.**

CHARGE: Under Section 21 Mines & Minerals (Regulation and
Development), Act, 1957 and 379 IPC.

Present: Ms. Manjinder Kaur, Addl. Public Prosecutor for State.
Accused on bail, represented by Ms. Neha Singla, Advocate.

JUDGMENT:

Accused facing trial has been sent up to face trial for an
offence punishable under sections 379 of IPC and 21 Mining & Minerals
(Regulation and Development), Act, 1957 by the police of Police Station
Meharban, Ludhiana.

2. As it emerges from the final report submitted under Section
173 CrPC and documents appended therewith, case of the prosecution is

that on 16.07.2017 ASI Suresh Kumar No.2045 along with HC Prem Chand No.787, PHG Joginder Singh and PHG Bakshish Singh were present at T-Point Seerah-Rahon Road in connection with patrolling and checking of suspected persons and vehicles where ASI Suresh Kumar received secret information that Harmeet Singh son of Harnek Singh r/o Village Chuharwal is habitual of illegal mining of sand from Satluj river through pipe after installing engine in the Verma Boat (dragging machine) and thereafter load the stolen sand in the Tractor-Trolley and today he is also doing illegal mining of sand from Satluj river in the area of Village Chuharwal and if the raid is conducted immediately he can be apprehended along with stolen sand. Considering the information, reliable Ruqa was scribed and sent the same through PHG Bakshish Singh to the police station concerned for registration of FIR u/s 379 IPC and 21 Mines and Minerals (Regulation and Development), Act, 1957 against the accused. Thereafter, Investigating Officer along with police party conducted raid at the place as disclosed by the secret informer and found that Verma Boat (dragging machine) was standing inside Satluj river on which engine of Ashok Leyland was installed. Photographs of Verma Boat were clicked at the spot. The said Verma Boat (dragging machine) was taken into police possession vide separate Recovery Memo which was attested by attesting witnesses. Rough site plan of the place of recovery was prepared. On return to police station, the case property was deposited with MHC. On 23.07.2017, Happy son of Mangat Ram, Dheer Studio has

produced the photographs of Verma Boat which were clicked by the Investigating Officer which were taken into police possession vide separate Memo. On 05.09.2017, during investigation, accused Harmeet Singh was arrested in the present case. His arrest-cum-intimation Memo was prepared. His personal search Memo was also prepared. Both the Memos were signed by the accused and attested by attesting witnesses and thereafter as per orders of the Court, he was released on bail. On 23.10.2017, further investigation of the present case was got conducted by ASI Satnam Singh. On 13.11.2017, further investigation of the present case was got conducted by ASI Joginderpal. During investigation, documents with regard to ownership of the Verma Boat were taken into police possession vide separate Memo which was attested by attesting witnesses. The statement of witnesses under section 161 Cr.PC were recorded. Thereafter, on completion of investigation, challan against the accused was presented in the court of Learned Illaqa Magistrate for judicial verdict.

3. On presentation of challan, the copies thereof along with attending documents, as required under Section 207 Cr.PC, were supplied to the accused and his statement was recorded.

4. Since the offence under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, was exclusively triable by the Court of Sessions, so the learned Illaqa Magistrate, vide order dated 20.05.2019, committed the instant case to the court of Sessions.

5. After commitment proceedings, the instant case was sent to the court of Sh. Kulbhushan Kumar, the then learned ASJ, Ludhiana, for trial of the same in accordance with law.

6. Scrutiny of the final report was undertaken by the court of Sh. Kulbhushan Kumar the then learned ASJ, Ludhiana, to find a prima facie case punishable under section 21 Mines & Minerals (Regulation and Development), Act, 1957 and under section 379 of IPC against accused, he was charged accordingly, to which he did not plead guilty and claimed trial. Upon the accused pleading not guilty to the charges, prosecution was called upon to lead evidence in support of the charges. During trial, the present case was transferred to the court of undersigned on 21.05.2026.

7. In order to prove its case, the prosecution has examined PW1 ASI Suresh Kumar No.2045/Ldh (1st I.O), PW2 ASI Prem Chand No.787/Ldh (recovery witness), PW3 ASI Hardeep Singh No.2415/Ldh (MHC), PW4 ASI Joginder Pal No.1251/Ldh (2nd I.O). Thereafter, the prosecution evidence was closed by order.

8. After closure of prosecution evidence, statement of accused as required under Section 313 Cr.P.C. was recorded in which all the incriminating evidence appearing against the accused was put to him to which he denied the same and pleaded his false implication in the present case. He was not present at the spot. Nothing was recovered from him. He has not committed any such offence as alleged in the FIR. He opted not to lead evidence in defence.

9. The Learned Additional PP for State argued that the prosecution has duly proved its case against the accused and that it was proved on the file that accused is habitual of illegally mining the sand from the Satluj River bed with the help of Verma Boat (dragging machine) by installing engine of Ashok Leyland without any license or permission from the concerned department. It was further argued that said Verma Boat was recovered by the Investigating Officer from the spot. She further argued that during investigation, accused produced the documents with regard to ownership of Verma Boat (dragging machine) in question. She further argued that accused had committed the theft of sand without the consent of Govt./owner of such land and was liable to be punished under Section 21 of Mines and Minerals Act, 1957 as well as Section 379 IPC. She further argued that the offence under section 21 of the Act as well as section 379 of IPC was duly proved against the accused. On the submissions, she has prayed for convicting and sentencing the accused accordingly.

10. Per contra, above submissions have been vehemently opposed by learned counsel for the accused while stating that no offence under section 21 of the Mining Act as well as section 379 of IPC was proved or made out against the accused facing trial. He further argued accused was not arrested from the spot and that Verma Boat (dragging machine) has not been recovered from the place of recovery. He further contends that Verma Boat (dragging machine) has been picked up from

some other place and thereafter involved the same in the present case. It was further argued that no site plan of the place has been prepared from where the alleged theft of sand was committed nor the Investigating Officer visited any such spot nor the owner of any such land from where the sand was stolen, has been examined. It was further argued that neither the Mining Officer was called at the spot nor he was examined by the prosecution in the present case. It was further argued that entire case of the prosecution was false and that there was not even a mention of the weight of sand recovered nor the same was measured and the case property was not even produced in the court and as such, neither theft nor offence under Section 21 of Mining Act stands proved. He further argued that the case of prosecution was full of material contradictions and discrepancies and submitted that there was no evidence as to from where the alleged sand had been stolen or excavated. He further argued that no complaint under Section 22 of the Act has been moved by the Mining Officer after the delay of about three months which has not been explained and further the prosecution has failed to examine the Mining Officer in the present case. He further argued that the prosecution had miserably failed in proving its case and on these submissions, a prayer for acquittal of the accused was made.

11. I have heard the learned Addl.PP for the State as well as learned counsel for the accused and have gone through the file carefully. The points of determination before this court in this case are:-

1. Whether prosecution has led plausible evidence to bring home the guilt of the present accused?
2. Whether offence under Sections 379 IPC and 21 Mines and Minerals (Development and Regulation) Act is proved against the accused?

12. In order to prove its case, the prosecution has examined **PW1 ASI Suresh Kumar No.2045/Ldh (I.O)** who has deposed that on 16.07.2017 he along with police party were on patrolling duty in their private vehicles at T-Point Seerah, Rahon Road, Meharban, then informer gave secret formation to him that Harmeet Singh son of Harnek Singh, Dera Chuharwal is habitual to steal the sand from Satluj river bank through pipe by installing an engine in Verma boat and led the same in Tractor-trolley. Believing the information to be true and correct, Ruqa Ex.PA was scribed on the basis of which FIR which is Ex.PB was registered. Thereafter, as per secret information, police party conducted raid and on seeing the police party, accused succeeded in fleeing away. He found Verma boat, light blue colour was seen standing, in which the engine make Ashok Leyland was installed. He clicked the photographs of the above said boat in his Mobile phone and the boat was taken into police possession vide separate Memo Ex.PD. Rough site plan Ex.PC was prepared by him. During investigation, on 23.07.2017, Happy son of Mangat Ram, Dheer Studio produced the photographs of the recovered boat which were taken police possession vide Memo Ex.PE. Photographs

Ex.P1 to Ex.P8. On 05.09.2017, accused Harmeet Singh was arrested vide arrest-cum-intimation Memo Ex.PF and personal Ex.PG was prepared. Complaint under Section 22 of Mines and Minerals Act Ex.PH. He identified accused present in the Court.

13. In order to corroborate its version, the prosecution further examined **PW-2 ASI Prem Chand No.787/Ldh**, who has deposed that on 16.07.2017 he along with police party SI Suresh Kumar were on patrolling duty in their private vehicles at T-Point Seerah, Rahon Road, Meharban. Then informer made a secret information to him that Harmeet s/o Harnek Singh r/o Dera Chuharwal is habitual to steal the sand from Satluj River through pipe by an installing in Verma Boat and loaded the same in Tractor Trolley. Believing the information to be true and correct, Ruqa Ex.PA was scribed on the basis of which FIR Ex.PB was registered. Thereafter, as per secret information, police party conducted raid at the place as disclosed by the secret informer and on seeing the police party, accused was succeeded in fleeing away. He found Verma boat, light blue colour was seen standing, in which engine make Ashok Leyland was installed. I.O clicked the photographs of the above said Boat in his mobile phone and the boat was taken into police possession vide Memo Ex.PD. Rough site plan Ex.PC was prepared. During investigation, on 23.07.2017, Happy son of Mangat Ram, Dheer Studio produced the photographs of the recovered boat which were taken police possession vide Memo Ex.PE. Photographs Ex.P1 to Ex.P8. He identified accused

present in the Court.

14. The prosecution further examined **PW-3 ASI Hardeep Singh No.2415/Ldh (MHC)**, who has deposed that on 16.07.2017 I.O/ASI Suresh Kumar had deposited with him the case property i.e. one Boat and one Engine with him. He made relevant entries in register no.19.

15. The prosecution further examined **PW-4 ASI Joginder Pal No.1251/Ldh (2nd I.O)**, who has deposed that on 13.11.2017 investigation of the present case was entrusted to him and during investigation, he collected documents regarding ownership of sand dragging machine (Boat) from accused Harmeet Singh vide Memo Ex.PW4/1 and recorded the statements of witnesses. After completion of investigation, challan was prepared and presented by Inspector Jarnail Singh. Case property i.e. sand dragging machine (Boat) was released on Sapurdari. He identified accused present in the Court.

16. I have heard the rival contention of Learned Addl. PP for the State and the learned defence counsel and have gone through the record carefully.

17. In order to constitute and make out an offence under Section 379 IPC, the prosecution is required to prove (i) dishonest intention to take property, (ii) the property must be movable, (iii) it should be taken

out from the possession of another person, (iv) it should be taken without consent of that person, and (v) there must be removal of the property in order to accomplish the taking away of it illegally. The prosecution in the present case has miserably failed to prove the presence of above ingredients. There is nothing on record to show that any such sand was actually recovered from the possession of the accused or that any such sand had been stolen from any person or from Govt. land. The failure of the prosecution to prove the aspect of the sand being stolen or any such stolen sand having been recovered from the possession of accused, causes a heavy dent in the case of the prosecution.

18. It is a cardinal principle of law that the onus remains of the prosecution to prove its case against the accused beyond shadow of reasonable doubt. Herein, the accused facing trial has been charged for committing offence punishable under section 21 Mining & Minerals (Regulation and Development), Act, 1957 as well as under section 379 of IPC. As per prosecution version, the accused facing trial was not arrested from the spot. The onus to prove its case is upon the prosecution and it was incumbent upon the prosecution to lead cogent and convincing evidence to show and prove that the accused facing trial has committed theft of sand from the government property i.e. Satluj river in the area of Village Chuharwal However, the evidence on file does not prove so.

19. As far as Section 379 of IPC is concerned, it was incumbent upon the prosecution to prove that accused had committed the theft of

sand/soil in question, but there is absolutely no evidence on the record regarding the same. The version of the prosecution is that on 16.07.2017 on the basis of secret information, Investigating Officer along with police party conducted raid at Satluj River bank at village Chuharwal and recovered one Verma Boat (dragging machine) from the said place but no person was arrested by the police from the spot. However, the said version of the prosecution has not been proved on file beyond shadow of reasonable doubt. PW-1 ASI Suresh Kumar (1st I.O), who has conducted initial investigation of the present case has categorically admitted in his cross examination that no independent witness was joined at the time of recovery of Verma Boat (dragging machine) despite availability. He further admitted that no Mining Officer was called at the Spot. In the absence of any recovery of allegedly illegally mined sand from the place of occurrence, the prosecution version remains uncorroborated by material evidence and these material deficiencies creates a major dent in the prosecution case and cast a reasonable doubt on the version of prosecution. A careful scrutiny of cross examination of PW1 reveals that he has categorically admitted in his cross examination that no Mining Officer was called at the spot. This admission assumes significance as the presence and inspection of the spot by the competent Mining Officer is an important circumstance for establishing the factum of illegal mining and the nature of mineral allegedly extracted. Under the provisions of Mining Act, the presence and participation of the Mining Officer at the spot

assumes considerable significance for verifying the alleged illegal mining, assessing the nature and quantity of excavated material and ensuring compliance with statutory procedure. The inability of the Investigating Officer to call the concerned Mining Officer to the place of occurrence casts a serious doubt on fairness and completeness of the investigation. This lapse on the part of Investigating Officer assumes importance when viewed in conjunction with other deficiencies in the prosecution case and creates a reasonable doubt regarding the manner in which the alleged offence was investigated.

20. Furthermore, PW1 has specifically deposed in his examination in chief that he had clicked the photographs Ex.P1 to Ex.P8 of Verma Boat (dragging machine) from his Mobile Phone during the course of investigation. However, during cross examination he denied the very fact that he had clicked such photographs. The testimony of PW1 suffers from material contradiction on an important aspect of the prosecution case. This self-contradiction strikes at the credibility and reliability of his testimony. The prosecution has failed to furnish any plausible explanation for this inconsistency. Such contradictory statement made by the Investigating Officer regarding the material fact create a serious doubt about the fairness and authenticity of the Investigating Officer and diminish the evidentiary value of the alleged photographic evidence. Thus, the charge under Section 379 IPC has not been proved beyond shadow of reasonable doubt and the accused facing trial is

acquitted of the said charge.

21. As far as the charge under Section 21 Mining & Minerals (Regulation and Development), Act, 1957 and contention of learned Addl. PP for State that Sand Dragging Machine (Verma Boat) has been recovered by the Investigating Officer from Satluj River Bank village Chuharwal and the same was taken into police possession vide Recovery Memo Ex.PD, is concerned. This contention of learned Addl. PP for State also does not find any force in it. The presence of accused at the place of recovery i.e. Satluj River bank at village Chuharwal on 16.07.2017 has not been proved on file and Sand Dragging Machine (Verma Boat) recovered from the place of occurrence also does not stand in the name of accused Harmeet Singh facing trial.

22. Furthermore, PW4 ASI Joginder Pal (2nd I.O) has deposed in his examination in chief that he collected the documents regarding ownership of sand dragging machine (Boat) vide Memo Ex.PW4/1. During cross examination PW4 has categorically admitted that as per Invoice No.000203 the Sand dragging machine (Boat) stands in the name of Money Enterprises and further admitted that the said machine does not stand in the name of accused Harmeet Singh. This admission of PW4 assumes considerable significance, as the prosecution has failed to produce on record any documentary or oral evidence establishing that the accused was the owner in possession of or in conscious control of the said machine at the relevant time. Mere recovery of Sand dragging machine

(Verma Boat) from the place of occurrence, in the absence of cogent evidence does not connect it with the accused, facing trial. There is neither any recovery nor any circumstance showing the physical presence of the accused at the place of mining at the relevant time so in the absence of arrest from the spot, recovery of any incriminating material, or any other cogent evidence linking the accused with the alleged illegal mining and theft, the prosecution version remains doubtful and is not believable. The prosecution has failed to establish the necessary nexus between the accused and the machine in question. This material deficiency creates a reasonable doubt in the prosecution case. Even no person has filed any complaint regarding any such sand belonging to him or having been mined illegally from his land. Thus, there is no direct evidence on record connecting the accused with the alleged illegal mining of theft of minerals.

23. The entire facts and circumstances leaves the prosecution version highly doubtful and it cannot be said with certainty that the accused had committed any such offence. As such, the accused is acquitted of the charge under Section 21 of Mines & Minerals (Development and Regulation) Act, 1957.

24. As a sequel of my above discussion, it can be safely held that the prosecution has failed in bringing home the guilt of the accused person facing trial. As such, accused Harmeet Singh is acquitted of the charges under section 379 IPC and 21 of Mines & Minerals (Development

and Regulation) Act, 1957. The points of determination are decided accordingly. His surety stands discharged. Case property, if any be dealt with as per rules subject to decision in appeal or revision, if any. File be consigned to Record Room.

Pronounced in open Court.

Sd/-

Dated: 06.07.2026

**(Barjinder Pal Singh)
Additional Sessions Judge, Ludhiana.
(ID PB-0185).**

Gurmeet Singh, Stg.-II

(Directly dictated on computer)