

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Rev. No. 119 of 2024

Ashish Kumar Agrawal @ Ashish Agrawal, aged
about 36 years, son of Yamuna Prasad Agrawal,
resident of village-Siho, P.O.-Okhargada, P.S.-
Meral, District-Garhwa, Jharkhand.

..... ... Petitioner

Versus

The State of Jharkhand

..... ... Opposite Party

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Rahul Kumar, Advocate.

For the State : Mrs. Lily Sahay, A.P.P.

06/ 06.10.2025 Heard learned counsel appearing for the petitioner and learned
A.P.P. for the State.

2. This revision petition has been preferred against the order
dated 23.11.2023, passed by the learned Judicial Magistrate, 1st Class,
Garhwa, in Ranka P.S. Case No. 83 of 2022 corresponding to G.R. No.
353 of 2023, whereby the learned court has been pleased to frame the
charge under Sections 379 and 411 of the Indian Penal Code and Section
21 of the Mines and Minerals (Development and Regulation) Act, 1957
and Rule-54 of Jharkhand Minor Mineral Concession Rules, 2004 against
the petitioner, the case is pending before the same court.

3. Learned counsel appearing for the petitioner submits that the
F.I.R. was registered by the District/Assistant Mining Officer, Garhwa as
against the persons operating the brick-kiln without mining clearances for
the offences under Sections 379 and 411 of the Indian Penal Code and
Section 4/30 of the Mines and Minerals (Development and Regulation)
Act, 1957, Rule-54 of Jharkhand Minor Mineral Concession Rules, 2004.
He submits that the petitioner has entered into an agreement with Saheb
Mahto, Shiv Mahto and Naresh Mahto for renting 4.16 acres of land at
Khata No. 86. Plot No. 827 at village Puregada, P.S. Ranka, District
Garhwa for a period of 10 years on a consideration amount of Rs. 33,000/-

per year for the purpose of establishing brick kiln. He further submits that subsequent thereto the petitioner has established his brick kiln in the said plot of land and he has applied for necessary clearances and thereafter started the production of bricks. He then submits that upon a secret information, the District / Assistant Mining Officer, Garhwa along with the Sub-Divisional Officer, Ranka, Circle Officer, Ranka and Officer-In-Charge, Ranka Police Station conducted a raid upon the premises and seized 3.50 lakhs of pucca bricks and 3 lakhs of kachha bricks. He submits that on the basis of written information, the FIR has been registered stating that it has come to the knowledge that the brick kiln belongs to Ashish Agrawal and he was operating the same.

4. Learned counsel appearing for the petitioner submits that the only law point involved in the present criminal revision is with regard to framing of charge by the learned magistrate on the basis of FIR under the provisions of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, Rule-54 of Jharkhand Minor Mineral Concession Rules, 2004. By way of referring Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, he submits that cognizance / charge can only be framed on the basis of complaint, however, in the case in hand, the learned court has been pleased to frame the charge on the basis of police report. To buttress his argument, he relied in the case of *Jayant & Ors. Versus State of Madhya Pradesh*, reported in (2021) 2 SCC 670 and further in the case of *Kanwar Pal Singh Versus State of Uttar Pradesh & Anr.*, reported in (2020) 14 SCC 331.

5. Relying on the above two judgments, he submits that only on the basis of the complaint, the cognizance can be taken and also the charge can be framed. On these grounds, he submits that the part of the order of framing charge so far as Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule-54 of Jharkhand Minor Mineral Concession Rules, 2004 are concerned, may kindly be set aside.

6. Learned A.P.P. appearing for the State has opposed the prayer and submits that there is no bar of investigation if the IPC Sections are attracted, however, the learned magistrate is required to take cognizance or frame charge on the basis of the complaint under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957. She submits that the right of the State may kindly be protected so far as the provisions of Mines and Minerals (Development and Regulation) Act, 1957 are concerned.

7. In view of the above submissions of learned counsel appearing for the parties, it is an admitted position that on the basis of the police report, investigation was completed and pursuant to that the chargesheet has been submitted under the Sections of IPC as well as under the provisions of Mines and Minerals (Development and Regulation) Act, 1957.

8. Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 stipulates as under:-

“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.”

9. Looking into the above Section, it is crystal clear that only on the basis of the complaint, the cognizance can be taken, however, in the case in hand, the learned court has been pleased to take the cognizance on the basis of police report and further framed the charge under the Sections of IPC as well as under the provisions of Mines and Minerals (Development and Regulation) Act, 1957.

10. The conditions requisite for initiation of proceedings as dealt with in Chapter XIV of the Code of Criminal Procedure. An offence under section 379 of IPC is admittedly cognizable and, therefore, in

respect of theft of soil from Government land, it will be lawful for the police to register a case, investigate the same and to lay a police report under Section 173 of the Code of Criminal Procedure, upon which the jurisdictional Magistrate will be well within his jurisdiction to take cognizance as provided in Section 190(1)(b) of the Code of Criminal Procedure. To this extent, there is no conflict between the Mines and Minerals (Development and regulation) Act, 1957 and the Code of Criminal Procedure and thus question of one overriding the other does not arise. Therefore, in such cases, where the cases have been registered only under the provisions of IPC, more particularly, under Section 379 of IPC in respect of theft of soil, the question of quashing the FIRs or any subsequent proceedings does not arise at all notwithstanding any thing contained in section 2 of the Mines and Mineral (Development and Regulation) Act, 1957.

11. In Halsbury's Laws of England, under the heading 'Principles of Criminal Liability' "Crime" is defined as follows :-

"A crime is an unlawful act or default, which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment."

12. In Criminal Procedure Code 'Offence' is defined in Section 2(n) as follows :-

"Offence means any act or omission made punishable by any law for the time being in force"

13. In view of above two definitions, it appears that an unlawful act or omission is per se punishable under one or more laws and the subsequent prosecution is merely a step to bring home this liability to the offender under any existing procedure. In other words, it is the illegal act or omission which is primarily punishable and the penal section of any particular statute is merely a name under which it is prosecuted before a

court of law for that purpose, what is punishable is not the name given to it by any section of a penal statute, but the offence defined in that section.

14. The issue whether a person can be prosecuted for the offence under two different Acts along with other connected issues have also been considered and settled by the Apex Court in the case *of State (NCT Of Delhi) Versus Sanjay*; reported in (2014) 9 SCC 772, wherein the Hon'ble Apex Court in paragraph Nos. 69, 70, 71, 72 and 73, has held as follows:-

“69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. 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.

71. 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 liable to be punished for committing such offence Under Sections 378 and 379 of the Indian Penal Code.

72. 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. 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.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis--vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of

the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrates to proceed accordingly."

15. The aforesaid judgment of *N.C.T. of Delhi vs Sanjay (supra)* has been further considered in the case of *Kanwar Pal Singh Versus State of Uttar Pradesh & Anr.*, reported in (2020) 14 SCC 331 and in the case of *Jayant & Ors. Versus State of Madhya Pradesh*, reported in (2021) 2 SCC 670.

16. In light of the above discussions, this court has come to the conclusion that there is no dispute that an offence under Sub-Section 1 of Section 21 of the Act of 1957 is cognizable as provided in Section 21(6) of the said Act, therefore in view of principles laid down by the Hon'ble Apex Court in case of *Lalita Kumari Vs. Govt. of U.P. & Ors.* reported in (2014) (2) SCC 1, it is lawful for the police to register the case and to investigate the same as per provisions of the Section 154 of Cr.P.C. So far as the case in hand is concerned, the police not only registered the case under the IPC but also registered the case under Mines & Minerals(Development & Regulation) Act 1957 against the petitioner because the offences as pointed out and registered under both the aforesaid Acts are cognizable, but the difficulty arises only in the matter of taking cognizance because Section 22 of the Act, 1957 prohibits taking cognizance being taken except upon a complaint in writing made by a person authorized either by the Central Government or the State Government. If the act of the accused constitutes exclusively an offence under the Act 1957, it goes without saying that the police officer on completing the investigation cannot lay a police report under Section 173 of the Code of Criminal Procedure, because Court cannot take cognizance

in view of the bar contained in Section 22 of the Act. If the act of accused makes out a cognizable offence under Indian Penal Code as well as an offence under Section 21 of the Mines & Minerals(Development & Regulation) Act 1957, the registration of FIR under both the enactments is not illegal and the police can further investigate into such cases and file a police report under Section 173 of the Code of Criminal Procedure confining to the offence under Indian Penal Code alone. So far as offence under Section 21 of the Act of 1957 is concerned, it is for the authorized person to file a complaint after investigation before the magistrate concerned, upon which cognizance can be taken by the magistrate concerned.

17. In light of the above discussion, if the police officer files a police report under Section 173 of the Cr.P.C. in respect of offence under IPC as well as under Section 21 of Mines & Minerals (Development & Regulation) Act 1957, the magistrate may take cognizance of the offence under the IPC alone and proceed with the trial. So far as offence under Section 21 of the Act of 1957 is concerned, the magistrate can permit the officer concerned to file separate complaint and in case of filing such complaint by a person authorized in that behalf by the Central Government or the State Government, can take cognizance under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957.

18. The aforesaid aspect has further been clarified elaborately in the case of **Jayant (Supra)**, where in para-21 of the said judgment, it has been held as under:-

“21. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our

conclusions are as under:

21.1. That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In-charge/SHO of the police station concerned to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted.

21.2. The bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and the Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and the Rules made thereunder.

21.3. For commission of the offence under IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and the Rules made thereunder.

21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the In-charge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted

by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

21.5. In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.”

19. In view of the above discussions as well as facts, reasons and analysis, the part of the order dated 23.11.2023, passed by the learned Judicial Magistrate, 1st Class, Garhwa, in connection with Ranka P.S. Case No. 83 of 2022 corresponding to G.R. No. 353 of 2023, pursuant to the chargesheet dated 30.10.2022, by which charge under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule-54 of Jharkhand Minor Mineral Concession Rules, 2004, has been framed against the petitioner, is hereby, quashed with the liberty to the prosecution / officer concerned to file a complaint against the petitioner under the provisions of Mines and Minerals (Development and Regulation) Act, 1957. It is made clear that so far as order of framing charge under the provisions of IPC is concerned, that has not been interfered by this court and the concerned court is put at liberty to proceed in accordance with law against the petitioner, pursuant to the chargesheet

submitted against him.

20. With the above observation and finding, this criminal revision is disposed of.

23. The Registrar General of this court is directed to send a copy of this order to the concerned court as well as the Principal District and Sessions Judge of the different districts and also to the Special Courts constituted under the provisions of Section 30(b)(c) of the Mines and Minerals (Development and Regulation) Act, 1957 as well as to the Director General of Police, Government of Jharkhand, Ranchi for the needful.

(Sanjay Kumar Dwivedi, J.)

Dated:-06.10.2025

Amitesh/-

[A.F.R.]