

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

WRIT PETITION NO. 203549 OF 2025 (GM-RES)

BETWEEN:

ABDUL RASHEED
S/O ABDUL REHMAN
AGED ABOUT 61 YEARS
R/AT NO.4-8-75, KEB COLONY
SEDAM TALUKA-585222
KALABURAGI DISTRICT.

...PETITIONER

(BY SRI. YASHAS S. DIKSHIT, ADVOCATE
AND SRI.RAVEENDRA G. KOLLE, ADVOCATE)

AND:

- 1 THE STATE OF KARNATAKA
REP. BY ITS CHIEF SECRETARY
BENGALURU-560001.
- 2 THE DIRECTOR AND COMMISSIONER
DEPT. OF MINES & GEOLOGY
KHANIJ BHAVAN, RACE COURSE ROAD
BENGALURU-560001.
- 3 THE GEOLOGIST
O/O THE DEPUTY DIRECTOR
DEPARTMENT OF MINES & GEOLOGY
KALABURAGI-585102

...RESPONDENTS

(BY SRI.GOPALKRISHNA B. YADAV, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A)
ISSUE A WRIT OF CERTIORARI OR ANY OTHER ORDER OR
DIRECTION DIRECTING TO QUASH OR SET ASIDE ALL

FURTHER PROCEEDINGS IN PCR NO.25/2025 PENDING ON THE FILE OF LEARNED CIVIL JUDGE AND JMFC, SEDAM, PURSUANT TO A PRIVATE COMPLAINT DATED 17.05.2025 FILED BY THE 3RD RESPONDENT/COMPLAINANT UNDER SEC. 223 OF BNSS, 2023 PRODUCED AT ANNEXURE-A AND B RESPECTIVELY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.03.2026, COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV ORDER

1. Petitioner has preferred this writ petition under Articles 226 and 227 of Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, seeking following relief:

"Issue a writ of certiorari or any other order or direction directing to quash or set aside all further proceedings in PCR No.25/2025 pending on the file of learned Civil Judge and JMFC, Sedam pursuant to a private complaint dated 17.05.2025 filed by the 3rd Respondent/Complainant under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023."

2. Sri Raveendra G. Kolle, learned Counsel appearing for the petitioner would submit that the complainant Geologist is never a competent Authority nor an authorised person to lodge

a private complaint under Section 223 of BNSS, 2023 for the offences section 4(1), 4(1-A) and 21 of MMDR Act, 1957 and also under Rules 3(1), 31-U(8), 31-W(1) and (6) and 42 of KMMC Rules, 1994. The Gazette notification dated 21st January 2014 relied upon by the complainant, authorise him to exercise the powers only under Rules 43(3) and 46 of KMMC Rules and not otherwise. Since no allegation in the impugned complaint pertains to Rules 43(3) and 46 of KMMC Rules, the entire criminal proceeding vitiates and is liable to be quashed at the threshold. He would further submit that in exercise of powers conferred under Section 15(1) of MMDR Act, the State Government has framed the Rules governing the regulation of minor minerals. Consequently, the provisions of parent Act 1957, which primarily governs the major minerals, cannot be directly invoked in the present case, which is in respect of minor minerals. Even otherwise he would submit that Section 22 of MMDR Act, no court shall take cognizance of offences punishable under this Act or any Rules made thereunder, wherein a separate mechanism has been provided to take cognizance of offences in respect of minor minerals. The expression "any Rules made thereunder" Refers to the Rules framed by the Central Government vide Entry 54 of Union List-I of Seventh Schedule of Constitution of India, which does not

extend to the delegated or subordinate legislation framed by the State Government under Section 15(1) of the Act vide Entry 23 of State List-II of Seventh Schedule. As such, the very gazette Notification relied upon by the complainant to prosecute the petitioner is inherently defective and contrary to law.

3. He would further submit that the offences alleged under Sections 4(1) and 4(1-A) read with Section 21 of MMDR Act 1957, has no relevance in the case on hand. In the instant case allegation against the petitioner is as regards to the extraction of sand beyond the quarry lease area, which admittedly, is a minor mineral and governed by KMMC Rules, whereas section 4(1), as a whole, is applicable to major minerals. Since the petitioner has not committed any offence under MMDR Act, the penalties under Section 21 of the MMDR Act cannot be fastened on the petitioner. The petitioner cannot be punished for the offences that have not been established either factually or on legal stand point. He would submit that even otherwise the alleged violation under Section 4(1-A) of the MMDR Act and Rule 42 of KMMC Rules is highly illegal, erroneous, and without any iota of evidence. Nothing has been seized by the respondents during the course of investigation.

In the absence of the same, the entire allegation fall to earth. As a matter of fact, the violation of Rule 42 of KMMC Rules and Section 4(1-A) of the MMDR Act can be involved only when the mineral has been physically transported through road, Rail or any other means of transport without obtaining mineral dispatch permit. Here it is not the case as such. Hence the allegation in so far as Section 4(1-A) of MMDR Act and Rule 42 of the KMMC Rules is highly illegal and erroneous. To substantiate his argument, he places reliance on the decision of the Supreme Court in the case of HARYANA MINING COMPANY v. STATE OF HARYANA AND OTHERS reported in 2022 SCC ONLINE SC 577.

4. Having given my anxious consideration to the submissions advanced by the learned Counsel for the petitioner, I have examined the materials placed before the court.

5. The complainant Abdul Hafiz Shaikh, Geologist, Office of the Deputy Director of Mines and Geology, Gulbarga has filed complaint under Section 223 of BNSS, 2023 against the accused for commission of offence under Sections 42 and 44 of MMDR Act and KMMC Rules. Along with the complaint, the complainant has produced panchanama dated 14th May 2025.

After filing the complaint, learned Civil Judge and JMFC has registered a case in PCR No.25 of 2025 and the case was posted for hearing on 17th June, 2025. Thereafter, the case was being adjourned from time to time. After filing complaint, the learned Civil Judge and JMFC has not passed any order till this date. In view of provisions of sub-section (2) of Section 223 of Chapter XVI of BNSS 2023, The Magistrate shall not take cognizance of the complaint against a Public Servant. The provisions of the said Section reads as under:

"223. Examination of complainant.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

224. Procedure by Magistrate not competent to take cognizance of case.

*If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-
(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;(b) if the complaint is not in writing, direct the complainant to the proper Court.*

225. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on

an officer in charge of a police station except the power to arrest without warrant."

6. In view of Proviso 2 to Section 223 of Chapter XVI of BNSS-2023, no cognizance for offence shall be taken by the Magistrate without giving accused an opportunity of being heard. In the case on hand, after registration of the case in PCR No.25 of 2025, the learned magistrate has not initiated any proceedings against the accused. The learned magistrate has posted the case for hearing, even the learned magistrate has not issued any notice to the respondent to appear before the Court to answer the private complaint filed by the complainant. Before issuance of notice, and before passing any adverse order against the accused, the respondent has filed this petition. Even if the Magistrate issues notice to the respondent, then also the learned Magistrate has to provide an opportunity to the accused/respondent to file their objections/submissions as to the maintainability of the complaint.

7. In the case on hand without passing any adverse order by the learned Magistrate, the petitioner has filed present writ petition to quash the proceedings in PCR No.25 of 2025 on the

file of Civil Judge and JMFC, Sedam, which is not sustainable under law. Resultantly, I proceed to pass the following:

ORDER

Petition is ***dismissed***.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn