HIGH COURT OF MADHYA PRADESH : JABALPUR

Endt. No. C /1517 Jabalpur, dt. 27/06/2020
III-2-3/74

The copy the order passed by Hon'ble Shri Justice Virendra Singh, High court of M.P. Bench, Indore passed in M.Cr.C. No. 49340/2019 in the case of Dipesh S/o Satyanarayan Sartaliya Vs. State of M.P. & connected cases dated 11-05-2020 is forwarded to –

(i) The District & Sessions Judges ..... (all in the State) with a request to circulate the copy of the same to all the Judges working under your kind control for information and necessary action.

(ii) The District & Sessions Judge (Inspection/Vigilance), Jabalpur/ Indore/Gwalior;

(iii) The Director MPSJA for information & needful,

(iv) Member Secretary, SALSA, 574, South Civil Lines, Jabalpur,

(v) The Principal Registrar, Bench at Indore/Gwalior High Court of M.P., Jabalpur.

(vi) P.S. to Hon'ble the Chief Justice, High Court of Madhya Pradesh Jabalpur for placing the matter before His Lordships,

(vii) P.S. to Registrar General/ Principal Registrar(Judl)/ Principal Registrar(Inspection & Vigilance),/ Principal Registrar (Examination) / Principal Registrar (ILR) High court of Madhya Pradesh Jabalpur,

(viii) Registrar(J-I),(J-II) /(D.E.)/(A)/ (Vig.)/ (Vl.)/ High Court of Madhya Pradesh, Jabalpur.

(ix) The Registrar(IT) for uploading the same on the Website of High Court of M.P.

(B.P. SHARMA)
REGISTRAR(DE)

23/11/19
4. Rupa
295/96
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Serial No. 32789

Date 27.11.19

(1)

IN THE COURT OF HON'BLE HIGH COURT OF M . P.

BENCH AT INDORE

M.Cr.C.No. 49340 /19

Applicant/ Accused----------: Dipesh s/o Satyanarayan Sartaliya
Not in Jail
Age: 25 year, Occupation Business
Address: Kailash Marg
Mandsaur district Mandsaur

V/s

Respondent/ -----: State of M.P.
through P. S. Y.D. Nagar Mandsaur
district Mandsaur

1st APPLICATION Under section 482 of

Code of Criminal Procedure 1973

For Quashing the FIR Crime No. 554 /19 registered at P.S. Y.D. Nagar Mandsaur offence u/s 379, 414 I.P.C. 4,21. Mines & Minerals Act 1957 Rule 18 of Rules framed under M.P. Minerals Act (Prevention of illegal mining transportation & Storage) 2006

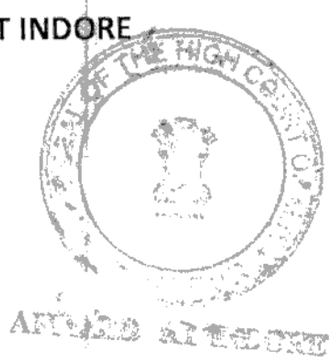
May it please your Honour

As per Instructions it is most humbly & respectfully submitted on behalf of applicants as under:-

(1) That by this petition applicant is praying quashing of FIR Crime No. 554/19 registered at P.S. Y.D. Nagar Mandsaur Copy of FIR is Annexure-A/1

2

HIGH COURT OF MADHYA PRADESH; BENCH AT INDORE



M.CR.C NO.49338/2019
Jayant Vs. State of MP

M.CR.C NO.49340/2019
Dipesh Vs. State of MP

M.CR.C NO.49847/2019
Mithun Vs. State of MP

M.CR.C NO.49856/2019
Deepak Vs. State of MP

M.CR.C NO.49859/2019
Kanhiyalal Vs. State of MP

M.CR.C NO.49861/2019
Rahul Vs. State of MP

M.CR.C NO.49963/2019
Shivlal Vs. State of MP

M.CR.C NO.49972/2019
Nooralam Vs. State of MP

M.CR.C NO.50602/2019
Radheshyam Vs. State of MP

M.CR.C NO.50610/2019
Radheshyam Vs. State of MP

M.CR.C NO.50614/2019
Nageshwar Vs. State of MP

M.CR.C NO.50627/2019
Krishnapal Vs. State of MP

M.CR.C NO.50636/2019
Arjun Vs. State of MP

M.CR.C NO.5648/2020
Arjun Vs. State of MP

Indore Dated 11/05/2020

Shri Yashpal Rathore, learned counsel for the petitioners.
Shri RK Pathak, learned counsel for the respondent/State.

ORDER

Sr No	MCRC No.	FIR No./DATE	POLICE STATION	Date of Incident
1.	49338/2019	234/16.11.2019	Nai Abadi	27.07.2019
2.	49340/2019	554/16.11.2019	Y.D. Nagar	16.11.2019
3.	49847/2019	564/17.11.2019	Y.D. Nagar	20.04.2019
4.	49856/2019	280/16.11.2019	Afzalpur	30.08.2019
5.	49859/2019	563/17.11.2019	Y.D. Nagar	20.04.2019
6.	49861/2019	588/18.11.2019	Y.D. Nagar	24.08.2019
7.	49963/2019	281/16.11.2019	Afzalpur	30.08.2019
8.	49972/2019	238/18.11.2019	Nai Abadi	28.08.2019
9.	50602/2019	137/17.11.2019	Daloda	25.05.2019
10.	50610/2019	136/16.11.2019	Daloda	25.05.2019
11.	50614/2019	139/17.11.2019	Daloda	10.06.2019
12.	50627/2019	591/18.11.2019	Y.D.Nagar	13.06.2019
13.	50636/2019	551/16.11.2019	Y.D.Nagar	02.04.2019
14	05648/2020	552/16.11.2019	Y.D.Nagar	02.04.2019

1. The petitioners have invoked the inherent powers of this Court conferred under Section 482 Cr.P.C. to quash the aforementioned FIRs registered against them for illegal mining/transportation of sand.

2. As common question of law is involved in all these petitions, therefore, they are heard together and are being decided by this common order.

3. The question involved is whether even after compounding the case of illegal mining of minerals like sand/stone/yellow soil etc. by the competent authority, the wrongdoer can be prosecuted again for the same act done in respect of the same mineral under the penal provisions of several other statues making mining/transportation/storage of minor mineral without permit/license illegal e.g. Section 379, 414 IPC, Rule 18, M.P. Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 (for brevity hereinafter referred to as Rules, 2006), Section 4/21, The Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR, Act) and Section 247(7) M.P. Land Revenue Code, 1959?

4. Facts giving rise to the present petitions, in brief, are that on a surprise inspection on the dates mentioned in the table above, the respective Mining Inspectors checked the tractor-trolleys of the petitioners along with the minor mineral (sand/stone/yellow soil etc.) loaded in them. They handed over the tractor-trolleys to the concerned police stations to keep them in safe custody. Finding the petitioners indulged in illegal mining/transportation of those minor mineral, they prepared their respective cases under Rule 53, M.P. Minor Mineral Rules, 1996 and submitted them before the Mining Officer with a proposal of

compounding the same for the amount calculated according to the concerned Rules (M.P. Minor Mineral Rules, 1996). The concerned Mining Officers submitted those cases before the Collector, who approved the proposal. The violators accepted the decision and deposited the amounts determined by the Collector for compounding the case. Their tractor-trolleys along with the minerals, which were illegally excavated/transported, were released.

5. After some time; a news was published in a daily news paper. The Judicial Magistrate First Class (JMFC), Mandsaur took *suo-moto* cognizance and called for a report regarding the cases registered and compounded during the period April, 2019 to October, 2019, from Mining Officer, Mandsaur. As per report submitted, **157 cases of illegal transportation, 19 cases of illegal excavation and 14 cases of illegal storage of sand; total 190 cases** of illegal mining between the period started from April, 2019 up to the period ended on 16th October; 2019 were registered and in all these cases, adopting the same procedure, the violation was compounded and after taking the compounding fee, all the cases were closed. Neither any action under any other enactment, making the act punishable was proposed nor was taken against any perpetrator. The learned JMFC considered it illegal and **vide impugned order dated 23.10.2019**, directed the police to register FIRs under Section 379, 414 IPC, Rule 18, M.P. Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006, Section 4/21, The Mines & Minerals (Development and Regulation) Act, 1957 and Section 247(7) M.P. Land Revenue Code, 1959 in addition to the action already taken under Rule 53, M.P. Minor Mineral Rules, 1996, Rule 23, M.P. Sand Rules, 2018, Rule 20 M.P. Sand Rules, 2019 against the persons, whose cases were falling under his territorial jurisdiction and investigate the same (6+61 cases of illegal excavation/ transportation).

6. At the outset, the learned counsel for the petitioner asserted that the impugned order as well as their prosecution is contrary to the law, blatantly against the principle of 'double jeopardy' and infringes their right of not to be prosecuted again for the same act of violation allegedly committed by them, for which they have already legally compounded.

7. The learned Public Prosecutor has supported the impugned order.

8. The principle of "Double Jeopardy" surges from Article 20(2) of the Constitution of India, which states that:

Article 20 of the Constitution of India:

20. Protection in respect of conviction for offences

(1) xxxxx

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) xxxxx

9. Rule of "issue stopple" incorporated in the Code of Criminal procedure, 1973 (No. 2 of 1974) also provides that a person cannot be prosecuted for the same offence twice. For the sake of convenience, **Section 300** of the Cr.P. C. is reproduced below:

300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897) or of section 188 of this Code. Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the cage comes within sub- section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

10. **Section 26 of the General Clauses Act, 1897** also bars the prosecution of a person twice for the same act or omission. This reads as follows:

26. Provisions as to offences punishable under two or more enactments- Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or

any of those enactments, but shall not be liable to be punished twice for the same offence.

11. Albeit a slight difference between the principles of "Double Jeopardy" and "issue estoppel", as "issue estoppel" operates in identity of issue and acquittal of the person at a previous trial on the same issue while identity of offence is requisite for application of the principle of "double jeopardy", essence of both the principles is the same. Quintessence of all these provisions is that a person cannot be prosecuted and punished for the same offence more than once if certain basic conditions for application of this principle are fulfilled. Such conditions have been spelled out by the Courts as and when the issue was agitated or brought before them. Abstract of these conditions is that the previous proceeding must have been before a Court of law, the person must have been prosecuted and punished, which means that the earlier proceedings must be valid and not void or abortive on any technical or default ground, the conviction/acquittal must have been in force at the time of second trial, the offence alleged in the second proceeding must be the same as that of the first proceeding and it does not include proceedings for confiscation of goods or fine or proceedings before administrative or departmental tribunal.

12. In a recent judgement rendered in the ***State of Maharashtra and Anr. v. Sayyed Hassan Sayyed Subhan and Ors. reported in AIR 2018 SC 5348*** Hon'ble the Supreme has considered the issue and held that:

> 7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence (T.S. Baliah v. T.S. Rengachari (1969) 3 SCR 65 : (AIR 1969 SC 701). The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law (State of Bihar v. Murad Ali Khan - (1988) 4 SCC 655 : (AIR 1989 SC 1). The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:
>
> "Provisions as to offences punishable under two or more enactments - Where an act or omission constitutes an offence under two or more enactments, then the offender

shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

8. In Hat Singh's case (State of Rajasthan v. Hat Singh (2003) 2 SCC 152 : (AIR 2003 SC 791) this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay (2014) 9 SCC 772 : (AIR 2015 SC 75) held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.

13. The question that **whether in view of an earlier conviction and sentence under Section 409 IPC, the subsequent prosecution for an offence under Section 105 of the Insurance Act was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution,** was answered by the Constitution Bench of the Hon'ble Supreme Court in ***State of Bombay v. S.L. Apte [AIR 1961 SC 578 : (1961) 1 Cri LJ 725]*** in the following terms:

13. To operate as a bar the second prosecution and the consequential punishment thereunder must be for 'the same offence'. The crucial requirement, therefore, for attracting the article is that the offences are the same i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out. It would be seen from a comparison of Section 105 of the Insurance Act and Section 405 of the Penal Code (Section 409 of the Penal Code being only an aggravated form of the same offence) that though some of the necessary ingredients are common they differ in the following:

(1) Whereas under Section 405 of the Penal Code the accused must be 'entrusted' with property or with 'dominion over

that property', under Section 105 of the Insurance Act the entrustment or dominion over property is unnecessary; it is sufficient if the manager, director, etc. 'obtains possession' of the property.

(2) The offence of criminal breach of trust (Section 405 of the Penal Code) is not committed unless the act of misappropriation or conversion or 'the disposition in violation of the law or contract', is done with a dishonest intention, but Section 105 of the Insurance Act postulates no intention and punishes as an offence the mere withholding of the property —whatever be the intent with which the same is done, and the act of application of the property of an insurer to purposes other than those authorised by the Act is similarly without reference to any intent with which such application or misapplication is made. In these circumstances it does not seem possible to say that the offence of criminal breach of trust under the Penal Code is the 'same offence' for which the respondents were prosecuted on the complaint of the company charging them with an offence under Section 105 of the Insurance Act.

14. This aspect of the matter based on the two offences being distinct in their ingredients, content and scope was not presented to the learned Judges of the High Court, possibly because the decisions of this Court construing and explaining the scope of Article 20(2) were rendered later. In Om Parkash Gupta v. State of U.P. [AIR 1957 SC 458 : 1957 Cri LJ 575 : 1957 SCR 423] the accused, a clerk of a municipality had been convicted of an offence under Section 409 of the Penal Code for having misappropriated sums of money received by him in his capacity as a servant of the local authority and the conviction had been affirmed on appeal, by the Sessions Judge and in revision by the High Court. The plea raised by the accused before this Court, in which the matter was brought by an appeal with special leave, was that Section 409 of the Penal Code had been repealed by implication by the enactment of sub-sections (1)(c) and (2) of Section 5 of the Prevention of Corruption Act because the latter dealt with an offence of substantially the same type. This Court repelled that contention. It analysed the ingredients of the two offences and after pointing out the difference in the crucial elements which constituted the offences under the two provisions, held that there was no repeal of Section 409 of the Penal Code implied by the Constitution of a new offence under the terms of the Prevention of Corruption Act. It was the application of this decision and the ratio underlying it in the context of Article 20(2) of the Constitution that is of relevance to the present appeal. The occasion for this arose in State of M.P. v. Veereshwar Rao Agnihotri [State of M.P. v.

Veereshwar Rao Agnihotri, AIR 1957 SC 592 : 1957 Cri LJ 892 : 1957 SCR 868] . The respondent was a tax collector under a municipality and was prosecuted for offences among others under Section 409 of the Penal Code and Section 5(2) of the Prevention of Corruption Act for misappropriation of sums entrusted to him as such tax collector. By virtue of the provision contained in Section 7 of the Criminal Law Amendment Act 46 of 1952, the case was transferred to a Special Judge who was appointed by the State Government after the prosecution was commenced before a Magistrate. The Special Judge found the accused guilty of the offence under Section 409 of the Penal Code and convicted him to three years' rigorous imprisonment but as regards the charge under Section 5(2) of the Prevention of Corruption Act, he acquitted the accused on the ground of certain procedural non-compliance with the rules as to investigation prescribed by the latter enactment. The respondent appealed to the High Court against this conviction and sentence under Section 409 of the Penal Code and there urged that by reason of his acquittal in respect of the offence under Section 5(2) of the Prevention of Corruption Act, his conviction under Section 409 of the Penal Code could not also be maintained, the same being barred by Article 20(2) of the Constitution. The High Court of Madhya Bharat accepted this argument and allowed the appeal and the State challenged the correctness of this decision by an appeal to this Court. Allowing the appeal of the State, Govinda Menon, J., delivering the judgment of the Court observed: (Veereshwar Rao case [State of M.P. v. Veereshwar Rao Agnihotri, AIR 1957 SC 592 : 1957 Cri LJ 892 : 1957 SCR 868] , AIR pp. 593-94, paras 5-6)

> '5. This Court has recently held in Om Parkash Gupta v. State of U.P. [AIR 1957 SC 458 : 1957 Cri LJ 575 : 1957 SCR 423] that the offence of criminal misconduct punishable under Section 5(2) of the Prevention of Corruption Act 2 of 1947, is not identical in essence, import and content with an offence under Section 409 of the Penal Code. ...
>
> 6. In view of the above pronouncement, the view taken by the learned Judge of the High Court that the two offences are one and the same, is wrong, and if that is so, there can be no objection to a trial and conviction under Section 409 of the Penal Code, even if the respondent has been acquitted of an offence under Section 5(2) of the Prevention of Corruption Act 2 of 1947. ... The High Court also relied on Article 20 of the Constitution for the order of acquittal but that article cannot apply because the respondent was not prosecuted after he had already been tried and

acquitted for the same offence in an earlier trial and, therefore, the well-known maxim *'Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa'* (No man shall be twice punished, if it appears to the court that it is for one and the same cause) embodied in Article 20 cannot apply.'

14. After considering conflicting judgments of the High Courts of Delhi, Gujarat, Kerala, Calcutta, Madras and Jharkhand on the question whether a person can be prosecuted for the offences under Sections 379/114 and other provisions of the IPC on the allegations of illegal mining in view of Section 22 of the MMDR Act, Hon'ble the Supreme Court held in ***State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437 : 2014 SCC OnLine SC 672 at page 811: (AIR 2015 SC 75)*** that subsequent trial, prosecution and punishment is not barred if the ingredients of the two offences are distinct.

15. In the present matter, the facts are not in dispute that all the petitioners, as alleged, were indulged either in illegal excavation or transportation or storage of minor minerals. The departmental officials booked them and proceeded against them under Rule 53, M.P. Minor Mineral Rules, 1996. They recovered compounding fees from all of them, released their vehicles and closed the chapter. The learned magistrate was of the opinion that Rule 53 of the Rules, 1996 and the various provisions inducted in several other laws operates in distinct and different fields, therefore, the petitioners were liable to be prosecuted for infringement of those laws also, so he directed the police to register the cases and proceed further in accordance with the law.

16. Thus, the question for consideration before this Court is whether the act of or the allegation made against the petitioners constitutes a distinct and different offence than the one defined under Rule 53 of the Rules, 1996 or falls within the ambit and scope of the definition of offences given in different legislations.

17. While replying the question whether the police has power to institute a case on the basis of FIR and whether magistrate has power to take cognizance of such an offence upon a police report, without a complaint from the authorised officer under section 22, MMDR Act and whether mining of sand from riverbed would constitute an offence under section 379 for dishonestly stealing public property, the Hon'ble Supreme Court, in the case of ***State (NCT of Delhi) v. Sanjay (supra)***, held that mining of sand from the riverbed without licence or permit is

also an offence of theft of mineral under section 378 read with section 379 IPC as natural resources belong to the public and State being its trustee, the police is empowered and duty bound to lodge FIR, investigate it and to file charge-sheet even if the complaint is not filed by the person authorised under the MMDR, Act. The ingredients of offence under Section 4(1-A) of MMDR, Act are distinct and different from the ingredients of illegal mining from the riverbed without licences/permit, which constitute an offence under Section 378 IPC read with section 379 IPC. Therefore, the subsequent trial, prosecution and punishment are not barred by the principle of "Double Jeopardy". The prohibition contained in Section 22 of the MMDR, Act against prosecution of a person except on a complaint made by the officer is attracted only when such a person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission; which constitutes an offence under the Penal Code. It is stated in para 72 and 73 of this judgement that:

> 72. From a close reading of the provisions of the 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, gravel and other minerals from the river, which is the property of the State, out of the 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 persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC 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 the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the 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 riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 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. .....

18. One Kanwar Pal Singh ***(Kanwar Pal Singh v. State of Uttar Pradesh and Another reported in 2019 SCC OnLine SC 1652)*** impugned the order dated 22nd July 2019 whereby the High Court of Judicature at Allahabad had dismissed his petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing criminal prosecution under Section 379 of the Indian Penal Code, 1860, Rules 3, 57 and 7 of the Uttar Pradesh Minor Mineral (Concession) Rules, 1963, Sections 4 and 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984. The FIR was registered against him alleging that he was mining sand outside the permitted area. The question of violation of Section 22 of the Mines Regulation Act was raised before the Supreme Court. It was argued that the appellant had been wrongly charge-sheeted by the police for the offences, as at the best there was violation of Section 4, which is punishable under Section 21 of the MMDR, Act and as per Section 22 no Court can take cognizance of the offences under the Mines Regulation Act, except on a complaint in writing by a person authorised by the Central or the State Government. It was further argued that the State police not being authorised, could not have filed the charge-sheet/complaint. Repelling this contention, the Hon'ble Supreme Court reiterated the view taken in ***State (NCT of Delhi) v. Sanjay (supra),*** that the offence under Section 21 read with Section 4 of the MMDR, Act and Section 379 of the IPC are different and distinct offences. Section 26 of the General Clauses Act bars prosecution and punishment twice for the 'same offence' under two or more enactments but permits prosecution for 'different offences'.

19. While considering *vires* of Rule 53 of the Rule, 1996, a Division Bench of this Court in ***Rajkumar Sahu v. State of Madhya Pradesh and Ors. AIR 2018 MP 87 (MP High Court)*** held that the trial for an offence under Section 21 of the MMDR, Act, which contemplates imposition of penalty and sentence are distinct and separate procedure than confiscation of vehicle in terms of Rule 53. The confiscation under Rule 53 is an independent proceeding. Such confiscation is not a

punishment, which is imposable in exercise of the powers conferred under Section 21 of the MMDR, Act. The provisions of Rule 53 are to ensure that there is no unauthorised extraction and transportation of the minerals, while Section 21 of the Act, provides for imprisonment as well.

20. Relying on the judgement rendered by the Madras High Court in the case of ***Sengol, Charlesand K. Kannan etc. v. State Rep. By Inspector of police 2012 Cri LJ 1705, by M.P. High Court in WP-18818/2017 : (AIR 2018 MP 87) and WP- 19320-2017 Ayush Namdeo v. The State of M.P. decided on 15 February, 2018*** and of the Apex Court in the case of ***State (NCT of Delhi) v. Sanjay (supra)*** and comparing the provisions of Rule 53 of the Rules, 1996 and Section 378,379 IPC, this Court in ***Ashish Singh v. State of Madhya Pradesh reported in 2019 CRI. L. J. 2532*** held that:

> 9. Thus from a bare perusal of both these provisions of Section 378 of IPC and rule 53 of M.P. minor mineral Rules, 1996 as amended, it is clear that both these offences are quite distinct. While Rule 53 deals with unauthorized extraction and transportation of minor minerals and provides for penalty imposed in a graded manner as well as the seizure and confiscation of tools, machines and vehicles used, which powers have been conferred on the officers of the State instead of judicial Courts established and governed by Cr.P.C. whereas Section 378 deals with theft of sand without the consent of the owner that is the State.

21. In the case of ***Nitesh Rathore and another vs. State of M.P. and others, 2018 (4) MPLJ 193*** full Bench of this Court has held that:

> iii) The M.P. Minor Mineral Rules, 1996 provide for penalty for extraction or transportation of minor minerals, which is in addition to the prosecution under the M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 or the penalty to be imposed under Sub-section (7) of Section 247 of the Code.
>
> x) The violator would be liable to be criminally prosecuted in respect of minerals including the minor minerals in terms of the 2006 Rules whereas in terms of Rule 53 of the 1996 Rules, the violator will be liable to pay penalty, which is distinct from the criminal proceedings.

22. The judgement of ***Nitesh Rathore (supra)*** is overruled by a larger Bench (comprising five judges) in ***Rajkumar Sahu v. State of M.P. 2019 (2) MPLJ 438***, on the findings that *'the complete discretion to forfeit in one case and to impose penalty in another case in the absence of any guidelines suffers from the vice of arbitrariness'* and that *'it is only when default in terms of sub-rule (1) of Rule 53 is not paid; the question of forfeiture will arise. Such process alone will save sub-rule (2) of Rule 53 from the vice of discrimination and arbitrariness. .... '* and not on any other issue decided in the case.

23. On the issue in hand, Para 7 of the order dated ***25th March, 2019*** of Division Bench delivered in ***M/S Rajlaxmi Dev Builders India vs Divisional Commissioner (M.P. No.666/2019)*** is also relevant and reads as under:

> 7. It is also apparent from a perusal of the provisions of the Rules of 1996 in juxta position with the provisions of Section 247 of the Code, that Rule 53 of the Rules of 1996, is a regulatory measure enacted for the purposes of preventing illegal extraction and transportation of "minor minerals" and the provisions are in addition to and in furtherance of the object of preventing illegal extraction and transportation of minor minerals as well as to confiscate tools, machines, vehicles, etc. repeatedly used by such offenders, while the provisions of Section 247 (7) of the Code, apply to all cases where a person extracts or removes all kinds of minerals, major or minor, without the authority of law, the right to which vests in the Government and has not been assigned by it by way of any lease or otherwise by any instrument. The provisions of Section 247(7) of the Code, also specifically states that they are without prejudice to any other action that may be taken against the offender. From a reading of the aforesaid provisions of Rule 53 of the Rules of 1996 and Section 247(7) of the Code, it is apparent that the provisions of the Code apply to all minerals, the right of which has not been leased out or assigned by the State Government to anybody and are without prejudice to any other action that has to be taken against the offender and, therefore, the contention of the learned counsel for the petitioner that no action could have been taken against him under the provisions of Section 247(7) of the Code, in view of the provisions of Rule 53 of the Rules of 1996, is rejected in view of the provisions of the Rules of 1996, the provisions of Section 247(7) of the Code and the Full Bench decision of this Court in the case of Nitesh Rathore (supra).

24. In the wake of the judgement of the Full Bench delivered in ***Nitesh Rathore (supra),*** order dated ***1st October, 2018*** of Division Bench passed in **W.P. No.22630 of 2018** in the case of ***Satish Prajapati vs The State of Madhya Pradesh*** and order delivered in ***Raj Laxmi Case (supra),*** the learned trail Court has righty concluded that a person is liable to be prosecuted and punished under Section 247 of the Madhya Pradesh Land Revenue Code, 1959 for illegal extraction of mineral from a quarry not assigned to him. The action taken against him under Rule 53 of the Rules 1996 does not restrict or bar proceedings under Section 247 of the MPLRC.

Thus, from the aforesaid, it is apparently clear that the ingredients of offence under Section 378/379 of IPC, Section 247 of MPLRC, Section 4/21 MMDR, Act and Rule 53 of M.P. Minor Mineral Rules, 2006 are different and distinct, they deals with and operates in different fields. Action taken under Rule 53 of the Rules, 1996 does not bar the Magistrate to take action under other relevant laws and still the Courts can take cognizance u/Ss 379 IPC, 247 MPLRC, 4/21 MMDR Act or under any other enactment, making the act punishable or liable for punitive action for theft of sand from the property owned by the 'State'. Since the law is settled, there is no error apparent on the record warranting this Court to exercise extraordinary powers conferred under Section 482 Cr.P.C.

25. In view of the foregoing discussion and the law laid down by the Courts, the impugned order of the learned trial Court directing the prosecution of the offenders under other laws cannot be said to be contrary to the law. I find the submission of the petitioners to be untenable. Consequently, all the petitions are dismissed and disposed off with a direction to the Magistrate concerned to proceed further in accordance with the law.

26. However, the impugned order shows that as per the report submitted by the mining officer, total 190 cases were registered and disposed off in the identical manner, but due to lack of territorial jurisdiction, the learned trial Court did not take action against those violators, whose cases were not falling in his territorial jurisdiction. Therefore, the Chief Judicial Magistrate, Mandsaur is directed to examine those matters and to take appropriate action against them according to the law within 3 (three) months from the date of receipt of this order. Compliance be submitted through the Principal Registrar, Bench at Indore.

27. A copy of this order be communicated to the all CJMs working in State of Madhya Pradesh with the direction to call for and examine the record and if any illegality or irregularity is found to be committed, the

action be taken against the Responsible person as is done by the learned JMFC, Mandsaur.

28. All IAs pending stand closed.

29. With the aforesaid, all the petitions stand dismissed and disposed off. A copy of this order be kept in all the connected petitions.

Sd/-

(VirenderSingh)
Judge

soumya