

(2022) 02 OHC CK 0153
In the Orissa High Court
Case No : CRLMP Nos.35, 36 Of 2022

Nandalal Rungta

APPELLANT

Vs

State Of Odisha (Vigilance)

RESPONDENT

Date of Decision : 18-02-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Negotiable Instruments Act, 1881 — Section 138
Code of Criminal Procedure, 1973 — Section 151, 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 120B, 379, 420, 434, 447
Mines & Minerals (Development & Regulation) Act, 1957 — Section 21(1), 22, 23, 24
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Forest (Conservation) Act, 1980 — Section 3
Orissa Value Added Tax Act, 2004 — Section 43
Orissa Entry Tax Act, 1999 — Section 10
Mineral Concession Rules, 1960 — Rule 27(5)
Forest (Conservation) Rules, 2003 — Rule 9

Citation : (2022) 02 OHC CK 0153

Hon'ble Judges : S.K. Panigrahi, J

Bench : Single Bench

Advocate : M.K. Mishra, S.Das, Sangram Das,

Final Decision : Allowed

Judgement

,

S.K. Panigrahi, J.",

1.Â These petitions have been preferred under Article 226 and 227 of the Constitution of India with a prayer seeking quashing of the Chargesheet,

No. 7 dated 26.03.2013, filed by Balasore Vigilance P.S. in VGR Case No. 20 of 2011 and all criminal proceedings emanating therefrom; quashing of",

the order of cognizance dated 3.06.2013 passed in VGR Case No. 20 of 2011 by the Special Judge (Vigilance) Keonjhar and quashing of the,

Chargesheet No. 62 dated 31.12.2012 filed by Balasore Vigilance P.S. in VGR Case No. 21 of 2011 and all criminal proceedings emanating,

therefrom; quashing of the order of cognizance dated 22.02.2013 passed in VGR Case No. 21 of 2011 by the Special Judge (Vigilance) Keonjhar, for",

the alleged commission of offences u/s. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (â??P.C. Act, 1988â??), Sections",

420/379/434/447/120-B of the Indian Penal Code, 1860, Section 21(1) of the Mines & Minerals (Development & Regulation) Act, 1957 (â??MMDR",

Act, 1957â?) and Section 3 of the Forest (Conservation) Act, 1980 (â??FC Act, 1980â?). As both the petitions involve similar facts and relate to the",

same Petitioner, they are being decided by this common judgment and order.",

2. Shorn of unnecessary details, the facts of the present matter are as follows:",

i. The present Petitioner in CRLMP No. 35 of 2022 is a Partner of M/s MangilallRungta (a partnership firm), which was the lessee for the Siljora-",

Kalimati Manganese and Iron Ore Mines up until 31.03.2020. In terms of the same, the lessee was permitted to dispatch the already raised material",

up until 31.10.2020 in accordance with the provisions of the MCR, 2016.",

ii. Whereas in CRLMP No. 36 of 2022, the present Petitioner is the Director of M/s Rungta Mines Limited (a Pvt. Ltd. Company) which was the",

lessee for the Jajang Iron and Manganese Mines up until 31.03.2020. The lessee was allowed to dispatch the already raised material up until,

31.10.2020 in accordance with the provisions of the MCR, 2016.",

iii. On 15.10.2009, the officials of the State Vigilance Department conducted an abrupt inspection of the leasehold areas of the lessee at both the",

Siljora-Kalimati Manganese and Iron Ore Mines and the Jajang Iron and Manganese Mines. The said inspection continued for 2 days i.e. on,

15.10.2009 and 16.10.2009. Pursuant to the same Balasore Vig P.S. Case No. 52 of 2009 and Balasore Vig. P.S. Case No. 53 of 2009 were lodged,

by officials of the State Vigilance Department at Balasore, Vigilance PS on 18.11.2009.",

iv. The present Petitioner along with M/s Mangilall Rungta and M/s Rungta Mines (P) Ltd. filed W.P.(Crl.) No. 786 of 2009 challenging registration of,

Balasore Vig. P.S. Case No. 52 of 2009 and all proceedings emanating therefrom and W.P.(Crl) No. 787 of 2009 challenging Balasore Vig. P.S.,

Case No. 53 of 2009 and all proceedings emanating therefrom before this Court.

However, at the time of filing the respective Writ Petitions, the",

charge sheets based on Balasore Vig. P.S. Case No. 52 of 2009 and Balasore Vig. P.S. Case No. 53 of 2009 were not filed till then.,

v. Pursuant to the lodging of Balasore Vig. P.S. Case No. 52 of 2009, the State Vigilance Department submitted a charge sheet on 26.03.2013",

alleging commission of offences u/s. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988; Sections 420/120-B of the IPC, 1860; Section 21(1)",

of the MMDR Act, 1957 and Section 3 of the Forest (Conservation) Act, 1980. The Ld. Spl. Judge, Vigilance, Keonjhar on receipt of the chargesheet",

has taken cognizance of the offences in VGR Case No. 20 of 2011. This chargesheet dated 26.03.2013, all proceedings emanating therefrom and",

subsequent order of cognizance dated 3.06.2013 passed in VGR Case No. 20 of 2011 by the Special Judge (Vigilance) Keonjhar are the subject,

matter of challenge under CRLMP No. 35 of 2022.,

vi. Similarly, pursuant to filing Balasore Vig. P.S. Case No. 53 of 2009, the State Vigilance Department submitted a charge sheet on 31.12.2012",

alleging commission of offences u/s. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988; Sections 420/379/434/447/120-B of the IPC 1860;",

Section 21(1) of the MMDR Act, 1957 and Section 3 of the Forest (Conservation) Act, 1980. The Ld. Spl. Judge, Vigilance, Keonjhar on receipt of",

the chargesheet has taken cognizance of the offences in VGR Case No. 21 of 2011. This charge sheet dated 31.12.2012, all proceedings emanating",

therefrom and subsequent order of cognizance dated 22.02.2013 passed in VGR Case No. 21 of 2011 by the Special Judge (Vigilance) Keonjhar are,

the subject matter of challenge under CRLMP No. 36 of 2022.,

vii. At this juncture, it is necessary to delve into the exact nature of allegations contained in the charge sheets. Balasore Vig. P.S. Case No. 52 of",

2009 fecundated into the charge sheet dated 26.03.2013. The same is directed against the present Petitioner in his capacity as a Partner of M/s,

Mangilall Rungta (a partnership firm) and certain officials of the State Government for showing undue official favour to the present Petitioner which,

enabled him to carry out illegal mining causing loss to the state exchequer which is contrary to public interest. However, it is pertinent to note that the",

partnership firm itself was not arrayed as an accused in the sad case. M/s Mangilall Rungta was the lessee of Siljora-Kalimati Manganese and Iron,

Ore Mines. The partnership firm's mining lease was renewed from time to time with the latest renewal was granted till 31.03.2020. Initially,"

permission was only granted for extraction of Manganese Ore but after consideration of M/s. Mangilall Rungta's application dated 9.4.2001, the",

State Government permitted M/s Mangilall Rungta to extract iron ore vide its order dated 27.09.2002. There are broadly four allegations levelled,

against the present Petitioner in the charge sheet which are as hereunder:,

a. The first allegation in the chargesheet is that M/s Mangilall Rungta has violated the provisions of the Forest Conservation Act, 1980. It has been",

alleged that the iron ore was found in the forest area for which no forest clearance was obtained. Thus, it was alleged that the production and dispatch",

of iron ore from the DLC forest land was without approval of MoEF rendering the same illegal. On this count, the charge sheet alleges that a",

pecuniary loss of about Rs. 648 crores has been caused to the state exchequer,

b. The second allegation in the chargesheet is that as on 16.10.2009 i.e., on the date of inspection, there was a shortage of 1739.24 MT in the physical",

balance of manganese ore as compared to the book balance, which led to a pecuniary loss of royalty of Rs. 50,437.96/- and sales tax of Rs. 3,47,848/-",

.,

c. The third allegation in the charge sheet is that the lessee has raised ore without an approved IBM plan.,

d. The fourth allegation as set out in the charge sheet is that for the period between 2005-06 to 2009-10, there has been sales tax suppression in the",

sale of iron ore to the tune of Rs. 5,18,32,326/-",

Based on the aggregation of the aforesaid allegations, the charge sheet alleges a total pecuniary loss of Rs. 653.54 crores to the state exchequer.",

viii. The second FIR i.e. Balasore Vig. P.S. Case No. 53 of 2009 culminates into chargesheet dated 31.12.2012, filed against the present Petitioner in",

his capacity as a Director of M/s Rungta Mines (P) Ltd. (a Pvt. Ltd. Company). Herein also similar allegations have been made against certain,

officials of the State Government for showing undue official favour to the present Petitioner and enabling him to carry out illegal mining causing loss to,

the state exchequer. Here also, the company itself has not been arrayed as an accused. It appears from the records that the mining lease for the",

Jajang Manganese and Iron Mines was originally granted for manganese to one

M.G. Rungta in 1955 for a period of 20 years. The same was, transferred in favour of M/sRungta Mines (P) Ltd. in 1967. The mining lease was renewed from time to time with the latest renewal being granted, uptill31.03.2020. There are broadly three allegations levelled against the present Petitioner in the charge sheet which are as follows; ,

a. The first limb of allegations in the chargesheet is that M/s. Rungta Mines Ltd. has violated provisions of the Forest Conservation Act, 1980 by",

breaking up 72.33 hect. land without DRP approval. Accordingly, it is alleged in the chargesheet that the lessee has extracted iron ore from this",

illegally broken up area thereby causing a pecuniary loss of Rs. 526.06 crores to the state exchequer.,

b. The second allegation on the chargesheet is that M/s Rungta Mines (P) Ltd. has trespassed into the neighbouring leasehold area of M/s Orissa,

Mining Corporation (OMC). Having trespassed into the leasehold area of OMC an excavation has been made on the side of the OMC leasehold area,

thereby allegedly committing theft of iron ore from the OMC leasehold area. The charge sheet alleges a pecuniary loss of Rs. 34.29 crores on this,

account.,

c. The third allegation in the charge sheetis that as on 15.10.2009 i.e., the date of inspection, there was a discrepancy between the book balance and",

physical balance of stock of sized iron ore and fines, which has led to a pecuniary loss of Rs. 15.11 crores towards cost of sized iron ore and fines and",

Rs. 1.62 crores towards royalty for the same.,

Thus based on the aforesaid allegations, the charge sheet alleges a total pecuniary loss of Rs. 577.09 crores to the State Exchequer for the Jajang",

Manganese and Iron Mines.,

3. Learned Sr. Counsel for the petitioner vehemently submits that absolutely no specific role has been attributed to the Petitioner in respect of any of,

the allegations, who is merely a partner in the lessee firm M/s Mangilall Rungta and no more than one of many directors in the lessee company M/s",

Rungta Mines (P) Ltd. It is trite in law that save and except in some specific cases, wherein the statute specifically incorporates the principle of",

vicarious liability, the principle cannot be extended to be applicable to all Acts. It is submitted that the Indian Penal Code does not envisage application",

of principle of â??vicarious liabilityâ?? to a person who is not directly charged for

the commission of an offence and a person therefore cannot be, made an accused merely by virtue of his official position in the absence of any specific role being attributed to him. Therefore, the role of the accused", has to be clearly, unambiguously and specifically averred in the complaint; a bald assertion shall hold no water. It is thus submitted that there cannot be", an automatic presumption against a Director or a Partner.,

4. Furthermore, it is submitted that on the dates of the surprise inspection i.e. 15.10.2009 and 16.10.2009, the officials of the Vigilance Department," Government of Odisha were not "authorised person" as envisaged under Section 22 of the MMDR Act to carry out any such inspection or, investigation. A representative of the Vigilance Department was deemed to be an "authorised person" only after Notification dated 14.01.2010 of, the Government of Odisha, which does not have any retrospective effect or operation. It is further submitted that for offences punishable under the", Forest (Conservation) Act, 1980, Rule 9 of the Forest (Conservation) Rules, 2003 stipulates that the procedure to be followed is that an officer", authorised by the Central Government, not below the rank of Conservator of Forests or the concerned Forest Officer having territorial jurisdiction over", forest land in question is required to file a complaint against persons prima facie guilty of such offence. Therefore, the Notification dated 14.01.2010", of the Government of Odisha cannot vest such authorisation rights on the State Vigilance Department as Rule 9 of the Forest (Conservation) Rules," 2003 requires the authorization to be issued by the Central Government. Therefore, the Vigilance Department was not authorised or competent to", carry out the inspection and subsequent investigation.,

Hence, the entire proceedings emanating from charge sheets dated 26.03.2013 and 31.12.2012 as well as the orders taking cognizance passed by the", Special Judge (Vigilance) Keonjhar dated 3.06.2013 in VGR Case No. 20 of 2011 and 22.02.2013 passed in VGR Case No. 21 of 2011 were liable to, be quashed and set aside.,

5. Learned counsel for the Petitioner also draws the Court's attention to the Multi Disciplinary Committee (MDC) Report dated 06.06.2017, which", after going through both chargesheets and allegations thoroughly passed a finding that the lessees (i.e M/s Rungta Mines (P) Ltd/M/s Mangilall, Rungta) have not committed any violation of the FC Act, 1980, nor has M/s.

Rungta Mines (P) Ltd. encroached upon the adjacent lease of M/s OMC",
 Ltd. which was upheld by the MDC in their Second Report dated 6.12.2018. The
 Vigilance Department has signed, accepted and endorsed both the",
 reports and has not taken any steps to challenge the findings. Therefore, it was
 earnestly contended that the present respondent itself admits and",
 agrees that the allegations made in the charge-sheets are not made out.,

6. Further submission was made by the learned counsel for the Petitioner that
 with respect to the allegations pertaining to discrepancies between,
 physical stock and book stock are not tenable. It was submitted that after
 examining the allegations against M/s Mangilall Rungta, the Dy.",
 Commissioner of Sales Tax, Barbil vide his assessment orders dated 23.07.2015
 under Section 43 of the OVAT Act, 2004 and Section 10 of the",
 Orissa Entry Tax Act, 1999 categorically held that no such allegations are
 established. Similarly after examining the allegations against M/s Rungta",
 Mines (P) Ltd., the Deputy Director of Mines in a report dated 24.07.2012
 submitted to the Director of Mines stated that such an allegation was not",
 made out against the lessee.,

7. Lastly, it has been contended that with respect to the allegation of suppression
 of sales tax against M/s Mangilall Rungta, the basis of the allegation",
 was that for purposes of calculating sale value for iron ore dispatched by the
 lessee between 2005-06 to 2009-10, the Prosecution has taken the rate",
 furnished by Odisha Mining Corporation (OMC) as the market rate for iron ore.
 However, the Petitioner drew this Court's attention to a letter of",
 Government of Odisha dated 01.03.2014 wherein it is stated that OMC's rate
 can never be considered the market rate, as the rate fluctuates from",
 mine to mine and lessee to lessee, depending on various factors like
 geographical formation, terrain, transportation cost etc. Therefore, prima facie",
 taking OMC's rate as the market rate to allege suppression of sales tax and
 cannot be the basis for a charge of cheating under Section 420.,
 Hence, this charge also was liable to be quashed.",

8. Per contra, the learned Standing Counsel for the Vigilance submitted that the
 Vigilance police in exercise of power under the Prevention of",
 Corruption Act, 1988 as well as under Section 151 of Cr.P.C. conducted the
 investigation, and by the time the charge-sheet was filed, the Vigilance",
 Department had already been authorized by the Government of Odisha vide

Notification dated 14.01.2010 to exercise the power as person authorized, under the MMDR Act, 1957, and hence the authority of the Investigating Agency to submit the charge-sheet under Section 21 of the MMDR Act", besides for other offences cannot be questioned.,

9. Heard Ld. Counsels for both the parties and perused the materials on record. Before advertng to the facts of the case, it is apposite to refer first to", the law applicable in order to appreciate the facts of the present case better.,

10. It is a settled position of law that the High Court, can in exercise of its powers under Articles 226 and 227 to issue appropriate directions to quash", a proceeding. The said power is extraordinary in nature and therefore, comes with the rider that it must sparingly be exercised to prevent the abuse of", process or court or to secure the ends of justice. The landmark case law which underlines the position of law is the decision of the Honâ??ble,

Supreme Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335, wherein the accused had filed a Writ Petition under Articles 226 and 227",

of the Constitution of India seeking issuance of a writ of certiorari quashing the first information report and also seeking a writ of prohibition,

restraining the petitioners herein from further proceeding with the investigation. The Honâ??ble Supreme Court was pleased to succinctly summarize,

the principles to be borne in mind by the Courts while exercising powers under Articles 226 and 227, by holding that:",

â??102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this,

Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which,

we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent",

abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently",

channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.,

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not",

prima facie constitute any offence or make out a case against the accused.,

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an",

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.,

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any, offence and make out a case against the accused.,

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police",

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.,

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just,

conclusion that there is sufficient ground for proceeding against the accused.,

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to,

the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for",

the grievance of the aggrieved party.,

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking,

vengeance on the accused and with a view to spite him due to private and personal grudge.,

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and,

that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the,

allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act

according,

to its whim or caprice.â??,

Furthermore, the Honâ??ble Supreme Court in VaralaBharath Kumar v. State of Telangana (2017) 9 SCC 413, was pleased to hold that:",

â??6. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be,

exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the first",

information report/the complaint or the outcome of investigation as found in the charge-sheet, even if they are taken at their face value and accepted in their",

entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence,

alleged; where the uncontroverted allegations made in the first information report or complaint and the material collected in support of the same do not disclose,

the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the,

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal,

grudge, the power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure may be exercised.",

7. While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a court of appeal or revision. Inherent",

jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the",

tests specifically laid down under Section 482 itself. It is to be exercised ex debitojustitiae to do real and substantial justice, for the administration of which alone",

courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised,

to stifle a legitimate prosecution. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary",

jurisdiction of quashing the proceedings at any stage.â??,

The Honâ??ble Supreme Court as far back in 1982 in State of W.B. v. Swapan Kumar Guha (1982) 1 SCC 561, had the opportunity to deal with",

appeals by special leave arising out of the judgment of a learned Single Judge of the Calcutta High Court. The two matters in the Calcutta High Court,

were in the nature of writ petitions under Article 226 of the Constitution which were filed by the firm and its partners for quashing an investigation,

commenced against the firm. Allowing the writ petitions, the High Court had issued a writ of mandamus directing the State Government and its",

concerned officersÂ toÂ â??forthwithÂ recall,Â cancelÂ andÂ withdrawÂ theÂ first information report . . . and all proceedings taken on the",

basis thereofÂ?,Â sinceÂ theÂ searches,Â seizuresÂ andÂ arrestsÂ madeÂ in pursuance of the said FIR are, according to the High Court,"

illegal and without jurisdiction.,

In this case, Chandrachud, C.J. in his concurring separate judgment had stated that â??if the FIR does not disclose the commission of a",

cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or receivedÂ?. Justice",

A.N. Sen who wrote the main judgment in that case, which view was concurred to by Chandrachud, C.J. and Varadarajan, J. agreed has laid the legal",

proposition as follows :,

â??â?| the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation",

into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should",

normally be permitted â?|.,

Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an",

investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose",

liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards,

them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed.,

When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing",

the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences",

and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to,

be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the",

offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court,

normally does not interfere with the investigation of a case where an offence has been disclosed. Whether an offence has been disclosed or not must,

necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the court is satisfied that an offence",

is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed",

for collecting materials for proving the offence.

In the abovementioned case, the Hon^{ble} Supreme Court had quashed the proceedings on the ground that the allegations made in the complaint did",

not constitute an offence within the ambit of the provisions of the Act under which the respondents/accused therein were sought to be prosecuted.,

This court may also finally advert to the Hon^{ble} Supreme Court's judgment in R.P. Kapur v. State of Punjab(1960) 3 SCR 388, wherein the",

Hon^{ble} Supreme Court was of the opinion that:,

6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse,

of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the,

provisions of the Code, and the High Court would be reluctant to interfere with

the said proceedings at an interlocutory stage. It is not possible, desirable or",

expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where",

the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the,

view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the,

quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been,

committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court,

would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may",

also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not",

constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information,

report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust,

to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court,

can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but,

there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of,

cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly,

inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.â??,

In view of the aforesaid judicial precedents which have withstood the test of time, the law on the subject is clear. The power relating to quashing of",

proceedings which tantamount to abuse of the process of law is available to a party either under Section 482 of CrPC by invoking its inherent, jurisdiction or under Article 226 of the Constitution by issuing an appropriate writ to that end.,

11. That being the position, it is now worthwhile to advert to the other limb of arguments which necessitates examination of Section",

22, Section 23 and Section 24 of the MMDR Act. For ease the relevant sections are reproduced herein below:",

Section 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.",

Section 23. Offences by companies. (1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be, guilty of the offence and shall be liable to be proceeded against and punished accordingly.,

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his,

knowledge or that he exercised all due diligence to prevent the commission of such offence.,

(2) Notwithstanding anything contained in sub-section,

(1), where an offence under this Act has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, such,

director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.",

Explanation. For the purposes of this section,,"

(a) company means any body corporate and includes a firm or other association of individuals; (b) director in relation to a firm means a partner in,

the firm.",

Section 24 - (1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose",

connected with this Act or the rules made thereunder, any person authorised by the [Central Government or a State Government] in this behalf, by general order,"

may?,

(a) enter and inspect any mine;,,

(b) survey and take measurements in any such mine;,,

(c) weigh, measure or take measurements of the stocks of minerals lying at any mine;"

(d) examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks",

of identification thereon, and take extracts from or make copies of such document, book, register or record;"

(e) order the production of any such document, book, register, record, as is referred to in clause (d); and",

(f) examine any person having the control of, or connected with, any mine."

(2) Every person authorised by the [Central Government or a State Government] under sub-section,

(1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and every person to whom an order or summons is issued by",

virtue of the powers conferred by clause (e) or clause (f) of that sub-section shall be legally bound to comply with such order or summons, as the case may be."

^,

12. A conjoint reading of the abovementioned sections draws this court's attention to the term "person authorized". The wording of Section,

22 therefore means that cognizance cannot be taken by any Court unless the complaint is submitted in writing by a person authorized. Thus, the Court",

cannot take cognizance of offences under the MMDR Act, if the complaint is submitted by a person who is not designated by the Central or State",

Government to be a "person authorized". Furthermore, apart from the bar placed at the stage of taking cognizance, Section 24 seems to place an",

embargo on who can enter, inspect, survey, take measurements, weigh, examine, etc. a working, actual or prospective mine. Under this Section also,"

the person who can investigate or inspect the mines has to be a "person authorized",

13. The surprise inspection in the present matter was conducted by State Vigilance officials on 15.10.2009 and 16.10.2009. The FIRs were lodged by,

the State Vigilance officials on 18.11.2009. At the time of filing the FIR, it appears from the record that the State Vigilance Department officials were",

not recognized to be "person authorized" under Section 22 or Section 24 of the MMDR Act. In fact, it was brought to my attention that it was",

only vide Notification dated 14.01.2010 of the Government of Odisha, that the State Vigilance Department Officials of and above the rank of",

Inspector of Police posted under the Director, Vigilance, Orissa and were conferred the power to conduct investigation/enquiry, take legal actions",

under the provisions of MMDR Act and other relevant Acts and Rules pertaining to the illegal mining in the State.,

14. However, another important point that arises for consideration is that upon a bare perusal of Section 22 read with Section 24 of the MMDR Act is",

that, the person authorized must be so authorized at the time when the Court takes "cognizance". This issue was deeply delved into by the",

Honorable Supreme Court in Jayant v. State of M.P. (2021) 2 SCC 670, wherein the Honorable Supreme Court was of the opinion that in order to",

not attract the bar under Section 22 of the MMDR Act, the only relevant consideration was whether the Magistrate was taking cognizance of the",

offences based on a written complaint by a person duly authorized, at that point of time, to file such complaint. The Honorable Supreme Court in",

S.R. Sukumar v. S. Sunaad Raghuram (2015) 9 SCC 609 was pleased to hold that:,

"12. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not,

merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the",

judicial mind whether to take cognizance of the offence or not. Under Section 200 CrPC, when the complainant is examined, the Magistrate cannot be said to",

have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is",

made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the,

contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the,

Magistrate has taken cognizance of the offence or not will depend upon the facts and circumstances of the particular case.â??,

15. Aanalogue application of the principles as abovementioned essentially means that when the Magistrate took cognizance, i.e. when the Magistrate",

applied his judicial mind to the facts of the matter and framed charges/issued process, which occurred on the basis of the chargesheet, a person",

authorised must have submitted the said charge sheet.,

16. My attention was also drawn to the judgment rendered by this Court in Jitendra Nath Patnaik v. State of Odisha Vigilance 2020 SCC OnLine,

559. Sections 22 and 24 of the MMDR Act in no uncertain terms envisage that only a â??person authorizedâ? can investigate and examine a mine,

and it is only upon receipt of a written complaint by a â??person authorizedâ? that a Court can take cognizance of any offences under the MMDR,

Act. There is no doubt that as of today, the State Vigilance Department officials are a â??person authorizedâ? but the said notification reposing this",

power with them was brought on 14.01.2010 and contains no provision or stipulation to be retrospectively applicable. Therefore, while at the time of",

filing the FIRs on 18.11.2009, the State Vigilance Department officials were not â??person authorizedâ?, however, at the relevant point of time when",

the Court took cognizance of offences â?" i.e. after the charge sheet was filed, the State Vigilance Department officials were empowered by the",

State Government and were â??person authorizedâ?. The contention that the State Vigilance Department officials were not â??person authorizedâ?,

at the time of taking cognizance is therefore unacceptable. That being so, the said issue is rendered otiose in light of the fact that the each of the",

charges in the chargesheet capsize in light of the discussions herein after.,

In light of the aforementioned position, reference may also be made to State of NCT of Delhi v. Sanjay (2014) 9 SCC 772, wherein the Honâ??ble",

Supreme Court held;,,

â??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 authorised 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 authorised officer. In case of breach and violation of Section 4 and other provisions of the Act,"

the police officer cannot insist the 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 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."",

Furthermore, this Honâ??ble Court in Ramesh Ku. Agarwal &Ors. v. State of Orissa &Ors 2019 SCC OnLineOri 226 has held that even though",

other offences disclosed in the FIR may still survive, but in the absence of following the statutory procedure as envisioned in Section 22 of the MMDR",

Act, i.e. where cognizance has been taken on the written complaint of a person who is not authorized, the offences for contravention of the MMDR",

Act will be set aside. This position has been consistently followed by this Honâ??ble Court in Surendra Kumar Agarwal v. State of Orissa and,

Ors. 2009 (II) OLR 407and more recently in Balasubramanian Prabhakaran v. State of Odisha (Vigilance) 2021 SCC OnLine Ori 147.,

Â In the above view of the matter, the law as it stands today, which emerges from the aforesaid discussion makes two things clear. In so far as",

offences under the IPC and the MMDR Act are concerned, even though the offences relate to the same transaction they will constitute distinct",

offences under the IPC and MMDR Act. The raison dâ??etre is that the ingredients of the offences under Sections 379, 420, 434, 447 of the IPC",

and Section 21 of the MMDR Act are completely distinct and separate. Therefore, even if the proceedings under the MMDR Act are not made out,"

the proceedings under the IPC can still continue independently. Secondly, in so far as the issue of bar under Section 22 of the MMDR Act is",

concerned, what is required to be seen is that whether on the date of taking

cognizance, the person authorized is filing the complaint or not. If at the",
time of filing of the complaint the person has been notified as "person
authorized" then the same will pass the muster and it will be intra vires.,
However, that being so, if a Court independently comes to the conclusion that the
ingredients of the offences under the Penal Code or the MMDR",
Act are not made out based on the materials on record then there is no bar for
quashing the same.,
18. The next prong of argument is on the principle of vicarious liability. The
question of making a company liable for criminal offences committed by,
its directors, managers, officers and other employees while conducting business
has gained importance in criminal law jurisprudence which is subject",
of so much debate. The traditional view was that a corporation could not be
guilty of a crime, because a criminal offence requires mens rea, which a",
company does not possess. To counter this, the courts developed the "Doctrine
of Attribution". As per this doctrine, in the event of an act or",
omission leading to violation of criminal law, the mens rea is attributed to those
who are the "directing mind and will" of the corporations.",
Although this doctrine was developed in the United Kingdom and has been in use
in India since many years, the Hon'ble Supreme",
Court's judgment in Iridium Indian Telecom Limited v. Motorola Inc.
(2011) 1 SCC 74 finally authoritatively resolved the debate.,
However, the Supreme Court in the Iridium case discussed the doctrine of
attribution, not to adjudge the liability of the directors, but to determine the",
liability of the corporation. The Apex Court held that criminal liability of
corporations would arise when the offence is committed in relation to the,
business by a person or body of persons in control of its affairs and when the
degree of control is such that a body or body of persons can be said to,
be its "directing mind and will". Thereby, the Apex Court resolved the
position regarding criminal liability of corporations. The immediate result",
of this position of law was that Directors, Partners, Officers, Employees started
getting arrayed as a party to criminal proceedings on the basis that",
they were the "mind and will" of the company/firm/corporation. The issue
which next arose for consideration was that in a number of cases of,
this nature, proceedings were initiated against such persons without even
arraying the company as an accused in the complaint. It was then observed",

and held by the Honâ??ble Supreme Court that in the absence of any specific allegation of vicarious liability against the Managing Director or such,

other officials of a company, and in the absence of the company being arrayed as a party, proceedings initiated against such Managing Director or any",

officer of a company were liable to be quashed. It has also beenÂ settled thatÂ whenÂ a complainantÂ intends toÂ rope inÂ a Managing,

Director or any officer of a company, it is essential to make a specific averment or requisite allegation to demonstrate how the person, so accused, is",

vicariously liable for the offences of the company.,

19. A reference in that regard may be made to decision of the Honâ??ble Supreme Court in Sunil Bharti Mittal v. CBIÂ (2015) 4 SCC 609,"

wherein the Honâ??ble Apex Court held; ,

â??42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company",

commits an offence involving mensrea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so,"

when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability",

unless the statute specifically provides so.,

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is",

sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime,

itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.â??",

20. The Honâ??ble Supreme Court in Sham Sunder v. State of Haryana (1989) 4 SCC 630 further held that; ,

â??9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first,

place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold.â??",

21. In Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668), the Apex Court observed; ",

13. Where a jurisdiction is exercised on a complaint petition filed in, terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the",

Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or,

the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the,

complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable",

for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf,

in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the",

complainant to make requisite allegations which would attract the provisions constituting vicarious liability.â??,

22. In *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998) 5 SCC 749, the Apex Court further held;"

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the,

complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the 14 Magistrate,

summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of,

allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in,

bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the,

accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to,

elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.â??,

23. The same principle has been reiterated in *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.* (2010) 10,

SCC 479 and *GHCL Employees Stock Option Trust v. India Infoline Ltd.*

d(2013) 4 SCC 505 wherein it was held that in the order issuing, summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the", Company Secretary and the Directors of the Company and the specific role played by them in their respective capacities which is the sine qua non, for initiating criminal proceedings against them.,

24. As has been previously observed by this Court in a separate judgment dated 8.10.2021, titled *Nitu Gupta and Anr. v. State of Odisha (Vigilance)*",

CRLMC No. 454 of 2021, apart from the conclusion that statutes mandatorily have to contain a provision to fixate vicarious liability which the IPC",

does not, what also flows from the above discussion is that even if a statute contains such an express provision as does the MMDR Act in Section 23,",

every person connected with the company shall not automatically fall within the ambit of the prosecution.,

25. It is noticed that in enactments where criminal liability sought to be affixed on a company the provisions usually provide for,

“offences/contravention by companies”. All these enactments such as the Negotiable Instruments Act, 1881, Essential Commodities Act, 1955,",

Foreign Exchange Management Act, 1999 and Prevention of Food Adulteration Act, 1954 specifically provide for offences/contraventions by",

companies and for their prosecution thereunder. When the statute itself provides for a provision for the prosecution of a company, the only exercise",

that remains thereafter is the application of the doctrine of attribution in order to pinpoint or fasten the liability upon the individuals within the larger,

body of persons occupying the management of the company.,

26. Furthermore, in *Sharad Kumar Sanghi v. Sangita Rane* (2015) 12 SCC 781, the Honâble Supreme Court observed that:",

“11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party",

and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations",

are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be",

initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather, Travels and Tours (P) Ltd.* in the context of the Negotiable Instruments Act, 1881.",

xx xx xx,

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the",

ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the",

appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated",

by the respondent against the appellant.â??,

27. This position was again clarified and reiterated by the Honâ??ble Supreme Court in *Himanshu v. B. Shivamurthy* (2019) 3 SCC 797. The,

relevant portion of the judgment reads as follows: ,

â??6. The judgment of the High Court has been questioned on two grounds. The learned counsel appearing on behalf of the appellant submits that firstly, the",

appellant could not be prosecuted without the company being named as an accused. The cheque was issued by the company and was signed by the appellant as,

its Director. Secondly, it was urged that the observation of the High Court that the company can now be proceeded against in the complaint is misconceived. The",

learned counsel submitted that the offence under Section 138 is complete only upon the issuance of a notice of demand and the failure of payment within the,

prescribed period. In absence of compliance with the requirements of Section 138, it is asserted, the direction of the High Court that the company could be",

impleaded/arraigned at this stage is erroneous.,

7. The first submission on behalf of the appellant is no longer *res integra*. A decision of a three-Judge Bench of this Court in *Aneeta Hada v. Godfather Travels &*,

Tours (P) Ltd. governs the area of dispute. The issue which fell for consideration was whether an authorised signatory of a company would be liable for,

prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three-Judge Bench held thus:",

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent",

to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that",

when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments",

in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded,

against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.",

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraignment of a",

company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same,

has been stipulated in the provision itself.",

28. Therefore, it is trite in law that commission of offence by the company is a sine qua non to attract the vicarious liability of others involved in the",

company. Thus, the so called "vicarious" liability of the Directors cannot be imputed automatically. Whether such liability is statutorily prescribed",

in a particular statute as is the case with the MMDR Act, or in the absence of any statutory provision to this effect, if it is to be deemed to be included",

under the IPC, either way, the prosecution would have to make averments with regard to the specific role played by the accused Director or Partner",

and demonstrate that such director or partner was "in charge of the affairs of the company" and directly and intrinsically connected to the crime,

alleged.,

29. I now shall embark upon an examination of the contentions of the parties in light of the settled positions of law as indicated above.,

IN CRLMP NO. 35 OF 2022 i.e. NANDLAL RUNGTA V. STATE OF ODISHA (VIGILANCE),

30. As priorly determined, the four allegations levelled against the Petitioner in the charge sheet dated 26.03.2013 are that:",

(i) The chargesheet alleges that M/s Mangilal Rungta has violated provisions of

the Forest Conservation Act, 1980. On this count it has been alleged that a",
pecuniary loss of Rs. 648.22 crores has been caused to the state exchequer.,

(ii) It has been alleged that on 16.10.2009 i.e., the date of inspection, there was shortage/ under-reporting of 1739.24 MT in the physical balance of manganese ore as",

compared to the book balance, which to a pecuniary loss of royalty of Rs. 50,437.96/- and sales tax of Rs. 3,47,848/- respectively.",

(iii) The third allegation being that the lessee has raised ore without approved IBM plan for certain years.,

(iv) The chargesheet alleges that for the period between 2005-06 to 2009-10, there has been sales tax suppression in the sale of iron ore to the tune of Rs. 5,18,32,326/-.",

31. Ex facie, it has to be borne in mind that the allegations are in the nature of offences committed by M/s Mangilall Rungta and no specific averments",

have been made against the present petitioner at any juncture. On top of that, the partnership firm itself has not been arrayed as an accused.",

32. The Honâ??ble Apex Court created a Special Investigating Team (SIT), sometime in 2014, to tackle the menace of black money in the country.",

While the said SIT was conducting its proceedings, mining vigilance cases were reviewed during the meeting of the SIT dated 12.09.2016. In the said",

proceedings it was directed that all mining vigilance cases initiated by the Vigilance Department, Govt. of Odisha shall be re-examined and further",

action, if any, required to be taken. In the said meeting, it was also proposed and decided to constitute a Multi-Disciplinary Committee (â??MDCâ?)",

to uniformly assess the quantum of alleged illegal mining in respect of the mining cases investigated by the Vigilance Department, Odisha. The MDC",

was constituted on 5.11.2016 to re-examine all mining vigilance cases initiated by the Vigilance Department, Odisha including the instant cases relating",

to two leases which are the subject matter herein. It is pertinent to note, at this juncture, that the Superintendent of Police, Vigilance Department, as a",

representative of the Director, Vigilance, i.e. the present Respondent, was a member of the said MDC. The said MDC submitted its first report on",

06.06.2017 (titled â??First Reportâ?) wherein,Â afterÂ goingÂ throughÂ theÂ instantÂ chargeÂ sheetÂ and allegations in detail, it",

categorically held as hereunder:,

As per Vigilance Report, Committee's observation
Mining operation
carried out by the
lessee in violation of
F.C. Act, 1980.", "The report of the Special
Secretary, F&E Deptt
and that of Regional
controller of Mines, IBM
indicate no such
violation.

As per Vigilance Report, "Committee's
observation
Mining operation carried out
by the lessee in violation of
F.C. Act, 1980.

Encroachment by the lessee
in the adjacent ML of M/s
OMC Ltd.", "The report of the
Special Secretary,
F&E Deptt and
that of Regional
controller of
Mines, IBM
indicate no such
violation.

43. Allegation (iii) pertains to the discrepancy between the book stock and physical stock also is not made out against the ML holder in view of the, fact that the Deputy Director of Mines in his report dated 24.07.2012 submitted to the Director of Mines, while being seized of that issue, clearly", states that this allegation is not made out against the lessee. The DDM in his report dated 24.07.2012 concludes that,,

5. From Issue No. 5 I find that, method of assessment so done by the Vigilance Department is not correct and accurate and more so when the figures have",

been compared by the Vigilance Department are partly based on photocopy unsigned loose sheet which is not a statutory document and partly on a statutory, records.,

6. In view of the conclusive remarks offered as above, it seems that there is no violation of Section 21(5) of MMDR Act, 1957, or Rule 27(5) of MCR 1960, or any of",

the provisions of the renewal mining lease dated 24.11.2005",

It is also pertinent to note that the said report has also not been challenged by the Opposite party, nor has any evidence been adduced which would",

create doubt in my mind over its tenacity or otherwise.,

44. Now adverting to the offences under the IPC, the following Sections and their essential ingredients are reproduced hereinbelow:",

i. Section 120-B of the IPC reads as follows;,,

120B. Punishment of criminal conspiracy.â?"(1) Whoever is a party to a criminal conspiracy to:,,

(1) Commit an offence punishable with death, [imprisonment for life]or rigorous imprisonment for a term of two years or upwards, shall, where no express",

provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.",

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with,

imprisonment of either description for a term not exceeding six months, or with fine or with both.],â?"",

A perusal of Section 120-B IPC makes it clear that an offence of â?"criminal conspiracyâ?" is a separate and distinct offence. Therefore, in order to",

constitute an offence of criminal conspiracy and to attract its rigor, two factors must spring forth from the facts of the case: first, involvement of more",

than one person and second, an agreement between/among such persons to do or causing to be done an illegal act or an act which is not illegal but is",

done or causing to be done by illegal means. The expression â?"criminal conspiracyâ?" was aptly explained by the Honâ?"ble Supreme Court in,

E.G. Barsay v. State of Bombay (1962) 2 SCR 195 . The learned Judge Subba

Rao, J. (speaking for the Bench in his distinctive style of writing) said;"

31. The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act, agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the",

commission of a number of acts.

In the present case, apart from making a bald assertion and naming the petitioner as an accused, nothing has been alleged or averred by the",

prosecution to demonstrate how the present charge is sustainable with the given factual backdrop.,

ii. Section 420 of the IPC reads as hereunder; ,

420. Cheating and dishonestly inducing delivery of property."Whoever cheats and thereby dishonestly induces the person deceived to deliver any property,

to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being",

converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable",

to fine.

Section 420 thus deals with cheating and dishonestly inducing delivery of property. The offence of cheating comprises two ingredients: deceiving any,

person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any,

property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the",

person so deceived was induced to do so or that such person acted on such inducement in consequence of his having been deceived by the accused,

and that the accused acted fraudulently or dishonestly when so inducing the person.,

iii. Section 378 of the IPC reads as; ,

378. Theft."Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that",

property in order to such taking, is said to commit theft."

The essential ingredients to prove an offence under Section 378 IPC are that the

accused persons should have taken the movable property dishonestly,"
the said property was taken out of the possession of complainant without consent and there was certain movement of the property. As held by the,
Honâ??ble Supreme Court in Chandi Kumar Das Karmarkar v. Abanidhar Roy AIR 1965 SC 585;,,

Â,

â??6. The offence of theft consists in the dishonest taking of any moveable property out of the possession of another with his consent. Dishonest intention exists,

when the person so taking the property intends to cause wrongful gain to himself or wrongful loss to the other. This intention is known as animus furandi and,
without it the offence of theft is not complete.â??,

iv. Section 434 of the IPC reads as;,,

â??434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.â?"Whoever commits mischief by destroying or moving any land-mark fixed",

by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for",

a term which may extend to one year, or with fine, or with both.â??",

Mischief is defined under Section 425 of the IPC and a conjoint reading of the two Sections lay out the essential ingredients which includes when a,

person, with the intent to or possessing the knowledge that he is likely to cause damage to property, causes any destruction or changes or diminishes",

the value of such property or affects its utility is guilty of the offence under Section 434 of the IPC.,

v. Section 441 of the IPC reads as;,,

â??441. Criminal trespass.â?"Whoever enters into or upon property in the possession of another with intent to commit an offence or to,

intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully",

remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit",

â??criminal trespassâ??.,,

The Honâ??ble Supreme Court in Mathri v. State of Punjab 1964) 5 SCR 916, held

as follows;"

14. In our opinion, the observations of the learned Judge as regards the meaning of the word "intent" indicates the correct approach to adopt in,

deciding whether the necessary ingredient of the offence of criminal trespass that the entry was "with intent to commit an offence or to intimidate, insult or",

annoy any person in possession of the property has been established. It follows from this that the mere fact that the natural consequence of the entry was known,

to be annoyance to the person in possession would not necessarily show that the entry was made "with intent to annoy". That fact as to what the natural,

consequence would be and the presumption of this being known to the person so entering would be only one circumstance to be taken into consideration along,

with other circumstances for the purpose of deciding the question with what intent the entry was made".

This Section therefore, provides inter alia that when a person enters into or upon a property in possession of another with intent to commit an offence",

or to intimidate, insult or annoy any person in possession of such property he commits the offence of criminal trespass. There has to be a finding based",

upon evidence to the effect that the act of trespass was committed either with intent to commit an offence or with intent to intimidate, insult or annoy",

any person.,

45. In so far as charges under Section 120-B and Section 420 of the IPC are concerned, then in both CRLMP 35 of 2022 and CRLMP 36 of 2022,"

the requisite essential ingredients constituting an offence of neither criminal conspiracy nor cheating are made out against the present Petitioner. There,

is no material available on record to lead this Court to believe that the present Petitioner conspired with the other accused to do any illegal act.,

Similarly, given the manner that the allegations of stock discrepancy and suppression of sales tax have been dealt with earlier, none of the requisites of",

the offence of "cheating" u/s 420 of the IPC are prima facie made out against the present Petitioner.,

46. The charge sheet dated 31.12.2012 against the Petitioner which is the subject matter in CRLMP No. 36 of 2022 also additionally alleges the,

commission of offences under Sections 379, 434 and 447 of the IPC by the present Petitioner. In this regard, it is sufficient to simply place reliance on",

the MDC Reports which unequivocally and categorically came to the conclusion that M/s Rungta Mines (P) Ltd. had not encroached upon the ML, area of its neighboring lease-holder M/s OMC Ltd. This finding leads us to the irresistible conclusion that neither Sections 379, 434 or 447 of the IPC", cannot hold water as the very basis of these allegations, which was the trespass, excavation and theft from the neighboring lease hold area, has been", impeached. Once the edifice of the offence is demolished the superstructure will capitulate.,

47. Finally, in a bid to leave no question unanswered, this Court also considers it relevant to mention that the one charge that finds mention in the", charge-sheets which has not been dealt with, is the charge of offences under Section 13(2) r/w 13(1)(d) of the PC Act, 1988. Here it is clarified that", Section 13(2) and Section 13(1)d of the PC Act, 1988 specifically deal with criminal misconduct by a public servant. The present Petitioner is not a", public servant and hence these charges are not applicable to him and the same have been included to rope in the public servants who are the other, accused persons via Section 120-B IPC.,

48. In the present matter, M/s Mangilall Rungta and M/s Rungta Mines (P) Ltd. have themselves not been arrayed as accused by the prosecution. In", the absence of arraying the company/firm against whom these present allegations exist, only the present Petitioner has been arrayed as the accused", and even then, there are absolutely no specific allegations or averments against the present Petitioner to impute him vicariously. In view of the", discussion above, on this ground itself these present petitions ought to be allowed as allowing the proceedings to continue against the Petitioner would", tantamount to a gross abuse of the process of law.,

49. As a sequitur, CRLMP No. 35 of 2022 and CRLMP No. 36 of 2022 are therefore allowed and chargesheet No. 7, dated 26.03.2013, filed by", Balasore Vigilance P.S. in VGR Case No. 20 of 2011 and all criminal proceedings emanating therefrom including the order of cognizance dated, 3.06.2013 passed in VGR Case No. 20 of 2011 by the Special Judge (Vigilance) Keonjhar and similarly, Chargesheet No. 62, dated 31.12.2012, filed", by Balasore Vigilance P.S. in VGR Case No. 21 of 2011 and all criminal proceedings emanating therefrom including the order of cognizance dated, 22.02.2013 passed in VGR Case No. 21 of 2011 by the Special Judge (Vigilance)

Keonjhar are hereby quashed and set aside.,

50. In view of the above, it is also pertinent to note that in W.P.(Crl.) No. 786 of 2009 and W.P.(Crl.) No. 787 of 2009, the foundation of those Writ",

Petitions are in the form of seeking issuance of a writ in the nature of certiorari to quash Balasore Vig. P.S. Case No. 52 of 2009 and Balasore Vig.,

P.S. Case No. 53 of 2009 respectively and all proceedings emanating therefrom. These Balasore Vig. P.S. Cases are also the subject of challenge in,

the present CRLMPs, however the substantive difference is that at the time of filing these Writ Petitions, the charge-sheets in both the matters had",

not been filed. In light of the above findings and the elaborate discussion, as has been discussed earlier, it is to be noted that M/s Mangilall Rungta and",

M/s Rungta Mines (P) Ltd. have not been arrayed as an accused even at the stage of filing of the respective charge-sheets. Given the materials on,

record which have been elaborately scrutinised and considered, including the MDC Reports, the report of the Deputy Director of Mines and the",

assessment order of the Dy. Commissioner of Sales Tax (all of which have remained unchallenged) amongst other things, the findings as",

aforementioned squarely apply to the facts adumbrated in W.P.(Crl.) No. 786 of 2009 and W.P.(Crl.) No. 787 of 2009. In light of the same, in order",

to do complete justice, ex debitojustitiae, to prevent an abuse of process of law, W.P.(Crl.) No. 786 of 2009 and W.P.(Crl.) No.787 of 2009 are also",

allowed qua the Petitioners therein. Consequently, FIR No. 52 of 2009 dated 18.11.2009 and FIR No.53 of 2009 dated 18.11.2009",

stand quashed qua the Petitioners in conformity with the present Judgment and Order.,

51. Ordered accordingly. No costs.,