

**(2022) 09 JH CK 0040**

**In the Jharkhand High Court**

**Case No :** Criminal Miscellaneous Petition No. 414 Of 2017

Tarashish Mandal @ Tarasis Mandal

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

**Date of Decision :** 21-09-2022

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 288, 304, 334, 337, 338, 378, 379  
Code Of Criminal Procedure, 1973 — Section 53, 173, 190(1)(d), 227, 378  
Mines Act, 1952 — Section 72A, 72(1)(a), 73  
Mines And Minerals (Development And Regulation) Act, 1957 — Section 4, 21, 21(2), 22  
General Clauses Act, 1897 — Section 26  
Transplantation Of Human Organs And Tissues Act, 1994 — Section 13(3)(iv)  
Prevention Of Damage To Public Property Act, 1984 — Section 3, 4

**Citation :** (2022) 09 JH CK 0040

**Hon'ble Judges :** Sanjay Kumar Dwivedi, J

**Bench :** Single Bench

**Advocate :** A.K. Kashyap, Manoj Kumar, P.C. Sinha, Tapas Roy

**Final Decision :** Dismissed

## Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. A.K. Kashyap, learned senior counsel for the petitioner and Mr. Manoj Kumar, learned counsel for the State.

2. This petition has been filed for quashing of the order dated 04.10.2016 passed by the learned District & Additional Sessions Judge-XIII, Dhanbad in connection with S.T. Case No.129/2016 arising out of Chirkunda (Panchet) P.S. Case No.270/2013, corresponding to G.R. Case No.4644/2013, pending in the court of the learned District & Additional Sessions Judge-XIII, Dhanbad.

3. The FIR has been instituted on the basis of self statement of S.I. Umesh Kumar Thakur, Incharge Panchet O.P. (Chirkunda P.S.) on 12.11.2013 at 17:00 hours alleging therein that on 11.11.2013 at about 12:30 hours the informant

received an information on his mobile from one employee of CISF that in Sushil Incline, Basantimata Colliery, C.V. Area of M/s. B.C.C.L., a coal roof has fallen underneath the coal mine, in which some persons have become injured and some have died. On this information, the informant went to Sushil Incline and came to learn that due to roof fall some persons have sustained injury who had given first aid. The informant also inspected the place of occurrence and found two persons dead and came to learn that the said Sunshi Incline was closed in the year 2008, but it was again opened on 16.07.2013 by the order of the D.G.M.S. and while SDL machines was being extracting without any support there was an accident of roof fall, labourers present over there told that wooden support was less and about the same the information was given to the Management but no support was extended, as such, accident had taken place and the informant also came to learn that four persons died and dead bodies were extracted with the help of rescue team. It was further alleged that due to the lapses on the part of the official of the Management etc. the direction of the security was not complied, as such, accident had taken place, in which four persons have lost their lives and two persons have become injured. The accident has taken place on 11.11.2013 at 11:15 hours. On the basis of the said information, the present case was registered under Sections 288, 337, 338, 304/34 of the Indian Penal Code against the petitioner and others.

4. Mr. A.K. Kashyap, learned senior counsel appearing for the petitioner submits that by the impugned order, the prayer made by the petitioner under Section 227 Cr.P.C. for discharge has been rejected. He further submits that entire allegation is with regard to mines operation and occurrence took place as coal roof has fallen on four persons and they have died. He also submits that the nature of allegation is covered under the Mines Act, 1952. The complaint case has been registered under Section 72A, 72(1)(a) and 73 of the Mines Act, 1952 in which cognizance has been taken by the learned Chief Judicial Magistrate, Dhanbad has taken cognizance for the offence under Sections 72A, 72(1)(a) and 73 of the Mines Act, 1952 in C.M.A. Case No.36 of 2014, corresponding to T.R. No.1626 of 2014. The said C.M.A. Case was filed on 12.02.2014 and the same is still pending. He further submits that once the special law is there, the Indian Penal Code is not attracted. To buttress this argument, he relied upon the judgment passed by this Court in Mithilesh Kumar Singh & others v. The State of Jharkhand & another decided on 04.08.2015 in Cr.M.P. No.314 of 2002 and in Arbind Kumar Singh v. The State of Jharkhand & another decided on 04.08.2015 in Cr.M.P. No.774 of 2002.

He further submits that identical issue was considered by this Court in 2005 (3) Eastern Criminal Case Jhr 530 and 2005 (2) Eastern Criminal Cases Jhr 407.

5. On the other hand, Mr. Manoj Kumar, learned counsel appearing for the State submits that occurrence took place on 11.11.2013 and on 12.11.2013 the FIR has been registered. He further submits that charge under Section 304/34 of the Indian Penal Code has been directed to be framed against the petitioner and

others by the learned court vide impugned order dated 04.10.2016. He further submits that the complaint has been filed on 12.02.2014 by the Inspector of Mines. He also submits that the mines was being operated illegally and without any valid permission and in that view of the matter, special Act is not attracted and therefore the learned court has rightly passed the impugned order. He further submits that identical issue involved in *State of NCT of Delhi v. Sanjay*, [2014 (4) JBCJ 251 (SC)]. He relied upon paragraphs 69, 70, 71 and 72 of the said judgment, which read as under:

"69. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is laible to be punished for committing such offence under Section 378 and 379 of the Indian Penal Code.

70. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft.

71. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

72. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and,

therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrates to proceed accordingly.

6. Learned counsel for the State further submits that the case of State of NCT of Delhi (supra) was again considered by the Hon'ble Supreme Court in Kanwar Pal Singh v. State of Uttar Pradesh & another, [(2020) 14 SCC 331]. He relied upon paragraphs 10, 15 and 16 of the said judgment, which read as under:

"10. Elucidating on the provisions of Section 4 read with Sections 21 and 22 of the MMDR Act, 1957 and the offence under Section 379 IPC, it was observed in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] : (SCC pp. 811-12, paras 69-72)

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

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and 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.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

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) CrPC."

(emphasis supplied)

15. We would again advert to the decision in *Sanjay [State (NCT of Delhi) v. Sanjay]*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437, which had overruled the decision of the Calcutta High Court in *Seema Sarkar v. State [Seema Sarkar v. State]*, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95 wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the MMDR Act, 1957 and Section 379 IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the MMDR Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that FIR should not be treated as registered under Section 379 IPC but only under Section 21 of the MMDR Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay]*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437 after referring to Section 26 of the General Clauses Act and the meaning of the expression "same offence", to observe that the offence under Section 21 read with Section 4 of the MMDR Act, 1957 and Section 379 IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the MMDR Act, 1957 and not under any other law. There is no bar on the court from taking cognizance of the offence under Section 379 IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the MMDR Act, 1957, unlike Section 13(3)(iv) of the TOHO Act.

16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs."

7. Learned counsel for the State further submits that Section 304 of the Indian Penal Code is attracted and the learned court has rightly rejected the petition filed by the petitioner for discharge.

8. In view of the above submissions of the learned counsel for the parties, this Court has gone through the materials on the record. It is admitted fact that due to roof fall of the mines, four persons have lost their lives on 11.11.2013 and the FIR was registered under Sections 288, 337, 338, 334/34 of the Indian Penal Code. The complaint was filed by the Mines Inspector on 12.02.2014 i.e. after lapse of three months of occurrence. The mines was not operated under the valid license or permission, which has been disclosed in the impugned order dated 04.10.2016. The said Mines was closed on the instruction of the authorities due to vulnerability, however to increase the volume of coal the said Mines was being operated. Thus, the case under Section 304/34 of the Indian Penal Code is made out.

9. In the cases relied by Mr. A.K. Kashyap, learned senior counsel for the petitioner, the facts were different. In those cases, the mines was being operated with valid license and permission and in that view of the matter, the Court interfered in those cases. What are the materials before the learned court in the charge-sheet is not before this Court and that is why, this Court is not in a position to appreciate the contention of Mr. A.K. Kashyap, learned senior counsel for the petitioner.

10. The cases relied by the learned counsel for the State in State of NCT of Delhi and Kanwar Pal Singh (*supra*) are fully covered in the facts and circumstances of the present case.

11. The FIR has been registered on 12.11.2013 and the complaint has been filed after three months by the Mines Inspector. It is well settled that first case will prevail. The Court has perused the impugned order dated 04.10.2016 and finds that the learned court has given thoughtful consideration of the petition filed by

the petitioner under Section 227 Cr.P.C. and has come to the conclusion that the case under Section 304/34 of the Indian Penal Code is made out. Sufficient reason has been provided by the learned court in rejecting the discharge petition filed by the petitioner. The learned court also come to the conclusion that there are sufficient materials for framing charge under Section 304/34 of the Indian Penal Code against the petitioner and others and posted the matter for framing of the charge. There is no illegality in the impugned order.

12. In view of the above facts, reasons and analysis, no case of interference is made out. Accordingly, this petition stands dismissed.

13. However, the trial will proceed on its own merit without prejudiced by this order.

14. Interim order dated 10.01.2018 stands vacated.