REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1920 OF 2019
ARISING OUT OF S.L.P.(CRIMINAL) NO. 10707 OF 2019

KANWAR PAL SINGH ..... APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH AND ANOTHER ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted.

2. Kanwar Pal Singh, the appellant, impugns the order dated 22nd July 2019 whereby the High Court of Judicature at Allahabad has dismissed his petition under Section 482 of the Code of Criminal Procedure, 1973 ('Code' for short) for quashing criminal prosecution under Section 379 of the Indian Penal Code, 1860 ('IPC' for short), 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 ('Mines

Regulation Act' for short), and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 arising out of Crime Case No. 289 of 2018, Police Station Vindyachal, District Mirzapur, Uttar Pradesh. The appellant had also challenged, without success before the High Court, the order dated 8th February 2019 passed by the Chief Judicial Magistrate taking cognizance and summoning the appellant for trial.

3. In brief, the facts of the case are that on the basis of a complaint filed by one Mr. S.K. Pal, Surveyor, Mines Department, District Mirzapur, FIR No. 0289 dated 15th November 2018 was registered at Police Station, Vindyachal, *inter alia* recording that on 2nd November 2018, during inspection of the mining site in Village Nandni, Tehsil Sadar, District Mirzapur, the Nayab Tehsildar had noticed illegal mining whereupon a report vide letter dated 12th November 2018 was submitted to the Sub-Divisional Magistrate, Sadar. The appellant is a Director of M/s. Kanwar Enterprises Pvt. Ltd., which was granted rights to excavate sand vide mining lease over Plot No. 2/4, measuring 12.35 acre and Plot No. 2/5 measuring 12.35 acre in Village Nandni. However, it is alleged that the appellant was mining sand outside the permitted area in Village Babhni numbered as 534/2 where he had illegally excavated a pit 50 feet long, 50 feet wide and 2 meter deep.

Consequently, the District Magistrate had ordered for immediate registration of the FIR under the aforesaid provisions.

4. Though a number of contentions were raised before the High Court, the learned senior counsel for the appellant has during the course of arguments before us restricted his submissions to the violation of Section 22 of the Mines Regulation Act and the legal effect thereof. Referring to the contents of the FIR, it is submitted that the appellant has 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 Mines Regulation Act. It is highlighted that M/s. Kanwar Enterprises Pvt. Ltd. had held a valid lease for mining. 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 State Government. The State police not being authorised, could not have filed the charge-sheet/complaint. The contention predicated on Section 22 of the Mines Regulation Act is made by relying upon the judgment of this Court in ***Jeewan Kumar Raut and Another*** v. ***Central Bureau of Investigation***[1]. In the written submissions filed by the appellant, a relatively new plea and contention has been raised by relying upon the

[1] (2009) 7 SCC 526

judgments of this Court in ***Belsund Sugar Company Limited*** v. ***State of Bihar***,[2] ***Sharat Babu Digumarti*** v. ***Government of NCT of Delhi***[3] and ***Suresh Nanda*** v. ***Central Bureau of Investigation***[4] to urge that the Mines Regulation Act being a special statute, prosecution for an offence under Section 379 of the IPC would not be maintainable. The judgment of this Court in ***State (NCT of Delhi)*** v. ***Sanjay***.[5], it is submitted, is distinguishable as the FIR for the offence against illegal sand mining in ***Sanjay*** (supra) was registered *suo moto* due to non-production of any document to establish mining rights and therefore, the ratio in that case would apply only to cases of illegal mining where the mining lease had already been revoked or there was no subsisting mining lease.

5. We find the submission of the appellant to be untenable. In ***Sanjay*** (supra), a Division Bench of this Court had decided appeals preferred against the conflicting judgments of the Delhi High Court, Gujarat High Court, Kerala High Court, Calcutta High Court, Madras High Court and Jharkhand High Court on the question whether a person can be prosecuted for the offences under Sections 379/114 and other provisions of the IPC on the

[2] (1999) 9 SCC 620
[3] (2017) 2 SCC 18
[4] (2008) 3 SCC 674
[5] (2014) 9 SCC 772

allegations of illegal mining in view of Section 22 of the Mines Regulation Act, which reads as under:

> "**22. Cognizance of offences.—** No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

After adverting to the provisions of the Code, namely, Sections 2(c), 2(d) and 2(h) which define 'cognizable offence', 'complaint' and 'investigation' respectively, this Court had referred to Section 4 of the Code, which reads as under:

> "**4. Trial of offences under the Indian Penal Code and other laws.—** (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

As per sub-section (2) to Section 4, all offences under any law, other than the IPC, can be investigated, inquired into and tried under the Code, subject to any enactment regulating the manner or place of investigation, trial etc. of such offences. Section 21 of the Mines Regulation Act, it was observed, states that the offences specified thereunder are cognizable. Section 41 of the

Code was referred to elucidate that the police has the power to arrest without warrant in case of cognizable offences. Sections 149 to 152 of Chapter XI of the Code that require the police to prevent cognizable offences either by arrest or otherwise, etc. were referred, to hold that the aforementioned provisions show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and also to prosecute such persons in accordance with law.

Accordingly, in ***Sanjay*** (supra) it was held that the investigation of the offences is within the domain of the police and the power of a police officer to investigate into cognizable offences is not ordinarily impinged by any fetters *albeit* the power must be exercised as per the statutory provisions and for legitimate purposes. The courts would interfere only when while examining the case they find that the police officer in exercise of the investigatory powers has breached the statutory provisions and put the personal liberty and/or the property of a citizen in jeopardy by an illegal and improper use of the powers or when the investigation by the police is not found to be *bona fide* or when the investigation is tainted with animosity. While examining the issue,

this Court in ***Sanjay*** (supra) took notice of the decision in ***H.N. Rishbud*** v. ***State of Delhi***[6] wherein this Court has held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to the taking of the cognizance or trial. The cardinal principle of law as noted by this Court in ***Directorate of Enforcement*** v. ***Deepak Mahajan***[7] is that every law is designed to further the ends of justice and should not be frustrated on mere technicalities. The public trust doctrine was cited and applied to underscore the principle that certain resources like air, sea, water, forests and minerals are of great importance to the people as a whole and that the government is enjoined to hold such resources in trust for the benefit of the general public and to use them for their benefit than to serve private interests.

6. This Court in ***Sanjay*** (supra) has cited several decisions wherein the challenge to the prosecution on the ground that there can be no multiplicity of offences under different enactments was resolved and answered by relying upon Section 26 of the General Clauses Act, which we would like to reproduce for the sake of convenience:

[6] AIR 1955 SC 196
[7] (1994) 3 SCC 440

> "**26. Provision 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."

Section 26 of the General Clauses Act permits prosecution for 'different offences' but bars prosecution and punishment twice for the 'same offence' under two or more enactments. The expression 'same offence' has been interpreted by this Court in numerous decisions viz., ***Maqbool Hussain*** v. ***State of Bombay***[8] with reference to the provisions of the Sea Customs Act and the Foreign Exchange Regulation Act, 1947; ***Om Parkash Gupta*** v. ***State of U.P.***[9] and ***State of Madhya Pradesh*** v. ***Veereshwar Rao Agnihotri***[10] with reference to Section 409 of the IPC and Section 5(2) of the Prevention of Corruption Act; ***T.S. Baliah v. ITO***[11] with reference to Section 52 of the Income Tax Act, 1922 and Section 177 of the IPC; ***Collector of Customs*** v. ***Vasantraj Bhagwanji Bhatia***[12], with reference to the provisions of the Customs Act 1962 and the provisions of the Gold (Control) Act, 1968; ***State of Bihar*** v. ***Murad Ali Khan***[13] with reference to the provisions of Sections 447, 429 and 379 of the IPC and provisions of the Wildlife

[8] AIR 1953 SC 325
[9] AIR 1957 SC 458
[10] AIR 1957 SC 592
[11] AIR 1969 SC 701
[12] (1988) 3 SCC 467
[13] (1988) 4 SCC 655

(Protection) Act, 1972; ***Avtar Singh*** v. ***State of Punjab***[14] with reference to Section 39 of the Electricity Act, 1910 and the provisions of theft under the IPC; and ***Institute of Chartered Accountants of India*** v. ***Vimal Kumar Surana***[15] with reference to the provisions of the Chartered Accountants Act, 1949 and offences under Sections 419, 468, 471 and 472 of the IPC. Elucidating on the provisions of Section 4 read with Sections 21 and 22 of the Mines Regulation Act and the offence under Section 379 of the IPC, it was observed in ***Sanjay*** (supra):

> "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

[14] AIR 1965 SC 666
[15] (2011) 1 SCC 534

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*) of the Code of Criminal Procedure."

(emphasis supplied)

7. As noticed above, in the written submissions the appellant has relied upon ***Belsund Sugar Company Limited*** (supra), ***Sharat Babu Digumarti*** (supra) and ***Suresh Nanda*** (supra) to contend that where there is a special act dealing with a special subject, resort cannot be taken to a general act. The said submission has no force in view of the ratio in ***Sanjay*** (supra) as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the Mines Regulation Act is different from the offence punishable under Section 379 of the IPC. Thus, they are two 'different' and not the 'same offence'. It would be relevant to state here that the Delhi High Court in its decision reported as ***Sanjay v. State***[16], which was impugned in ***Sanjay*** (supra), had accepted an identical argument to hold that once an offence is punishable under Section 21 of the Mines Regulation Act, the offence would not be punishable under Section 379 of the IPC. This reasoning was rejected by this Court and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.

8. We would also reject the contention raised by the appellant in the

[16] (2009) 109 DRJ 594

written submissions that the alleged theft of sand is not punishable under Section 379 read with Section 378 of the IPC as sand is an immovable property as per Section 3 (26) of the General Clauses Act. In the present case, sand had been excavated and was thereupon no longer an immovable property. The sand on being excavated would lose its attachment to the earth, ergo, it is a movable property or goods capable of being stolen. {See Explanation 1 to Section 378 of the IPC and ***Sanjay*** (supra) as quoted above}

9. We would in the end refer to the judgment in ***Jeewan Kumar Raut*** (supra) on which considerable reliance was placed by the appellant at the time of the hearing. The said judgment was distinguished in ***Institute of Chartered Accountants*** (supra) by observing that the provisions of the Transplantation of Human Organs Act, 1994 ('TOHO Act' for short) were different and were not similar to the provisions of sub-section 2 to Section 24-A, 25 and 26 of the Chartered Accountants Act as the TOHO Act is hedged with a *non-obstante* clause. We would like to further elucidate and explain that in ***Jeewan Kumar Raut*** (supra) this Court was examining the right of the appellant therein to claim statutory bail in terms of sub-section (2) to Section 167 of the

Code on the ground that the Central Bureau of Investigation ('CBI' for short) had failed to file the charge-sheet within 90 days from the date of arrest. Relying on Section 22 of the TOHO Act, which mandates filing of a complaint by a person duly authorised by a competent authority, it was observed that the TOHO Act is a special law which deals with the subjects mentioned therein, viz., offences relating to the removal of human organs, etc. Ordinarily, any person can set the criminal law into motion but the legislature keeping in view the sensitivity and importance of the subject had provided that the violations under the TOHO Act would be dealt with by the authorities specified therein. Thereafter, reference was made to Section 4 of the Code as cited above, to hold that the TOHO Act being a special Act, the matters relating to offences covered thereunder would be governed by the provisions of said Act, which would prevail over the provisions of the Code. Reference was made to clause (iv) of sub-section (3) to Section 13 of the TOHO Act which states that the appropriate authority shall investigate any complaint of breach of any of the provisions of the said Act or any rules made thereunder and take appropriate action. There is no similar provision under the Mines Regulation Act i.e. the Mines and Minerals (Development and Regulation) Act, 1957.

10. In ***Jeewan Kumar Raut*** (supra), it was noted that the CBI has been designated as an appropriate authority under the provisions of the TOHO Act and therefore entitled to carry on investigation. In this context, it was observed that Section 22 of the TOHO Act prohibits taking of cognizance except on a complaint made by an appropriate authority and therefore the police report filed by the CBI was only a complaint petition made by an appropriate authority in terms of Section 22 of the TOHO Act. Consequently, sub-section (2) to Section 167 of the Code would not be attracted as the CBI could not have submitted a police report in terms of sub-section (2) to Section 173 of the Code. ***Jeewan Kumar Raut*** (supra) was, thus, dealing with a contention and issue entirely different from the one raised in the present case. It is undisputed that decisions of the courts cannot be blindly applied in disjunction of the factual circumstances and issues of each case. The court decisions expound on the law as applicable to the specific circumstances of each case and such exposition may not therefore be necessarily applicable to another case given its own peculiarities. Therefore, the contention predicated on the ratio in ***Jeewan Kumar Raut*** (supra) holds no merit.

11. We would again advert to the decision in ***Sanjay*** (supra) which had overruled the decision of the Calcutta High Court in ***Seema Sarkar*** v. ***State***[17] 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 Mines Regulation Act and Section 379 of the 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 Mines Regulation Act, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that the FIR should not be treated as registered under Section 379 of the IPC but only under Section 21 of the Mines Regulation Act. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in ***Sanjay*** (supra) 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 Mines Regulation Act and Section 379 of the 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

[17] (1995) 1 Cal LT 95

is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the Mines Regulation Act and not under any other law. There is no bar on the Court from taking cognizance of the offence under Section 379 of the 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 Mines Regulation Act, unlike Section 13(3)(iv) of the TOHO Act.

12. 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 of the 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 Mines Regulation Act 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 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs.

.....J.
(S. ABDUL NAZEER)

.....J.
(SANJIV KHANNA)

NEW DELHI;
DECEMBER 18, 2019.