REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.824-825 OF 2020
(Arising from SLP(Criminal) Nos.2640-2641/2020)

Jayant Etc. ...Appellants

Versus

The State of Madhya Pradesh ...Respondent

WITH

CRIMINAL APPEAL NO.826 OF 2020
(Arising from SLP(Criminal) No.4549/2020)

State of Madhya Pradesh ...Appellant

Versus

Jayant ...Respondent

J U D G M E N T

M.R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 11.05.2020 passed by the

High Court of Madhya Pradesh, Bench at Indore in M.Cr.C No. 49338/2019 and M.Cr.C. No. 49972/2019, the original petitioner as well as the State of Madhya Pradesh have preferred the present appeals.

By the impugned common judgment and order, the High Court has dismissed the aforesaid applications filed under Section 482 Cr.P.C. to quash the respective FIRs for the offences under Sections 379 and 414, IPC, Sections 4/21 of the Mines & Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as the 'MMDR Act') and under Rule 18 of the M.P. Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2006 (hereinafter referred to as the '2006 Rules').

3. The facts in nutshell are as under:

On a surprise inspection, the respective Mining Inspectors checked the tractor/trolleys of the private appellants along with the minor mineral (sand/storage/yellow soil etc.) loaded in them. They handed over the tractor/trolleys to the concerned police stations to keep them in safe custody. Finding the private appellants indulged in illegal mining/transportation of minor mineral, the mining Inspectors prepared their respective cases under Rule 53 of the Madhya Pradesh Minor Mineral Rules, 1996

(hereinafter referred to as the '1996 Rules') and submitted them before the Mining Officers with a proposal of compounding the same for the amount calculated according to the concerned 1996 Rules. The concerned Mining Officers submitted those cases before the Collector, who approved the proposal. The violators accepted the decision and deposited the amounts determined by the Collector for compounding the cases. Their tractor/trolleys along with the minerals, which were illegally excavated/transported, were released.

3.1 That after some time, a news was published in a daily newspaper – Bhaskar on 8.9.2019 with respect to illegal excavation/transportation of mineral sand from Chambal, Shivna and Retam and other Tributary rivers flow from District Mandsuar and in surrounding places. It was revealed that due to illegal transportation of the minerals and without payment of royalty, revenue loss is occurring. It was reported that illegal mining, storage and transportation of mineral sand was being carried out at large scale. Similar kind of information was also subsequently published on 3.10.2019 in the daily newspaper – Bhaskar in Mandsuar edition. It was also reported that despite the offences under Sections 379 and 414, IPC and the offences

under the MMDR Act and the 2006 Rules were found attracted, necessary legal action has not been taken and the violators were permitted to go on compounding the offence under Rule 53 of the 1996 Rules. The learned Judicial Magistrate, First Class, Mandsuar took note of the aforesaid information and having taken note of the decision of this Court in the case of *State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772* taking the view that offences under the IPC and offences under the MMDR Act are distinct and different and it is permissible to lodge/initiate the proceedings for the offences under the IPC as well as under the MMDR Act, the learned Magistrate in exercise of powers conferred under Section 156(3), Cr.P.C. (suo motu) directed to register criminal case under Section 156(3) Cr.P.C. for initiation of investigation and for submitting of report after due investigation is conducted. The learned Magistrate also directed the concerned In-charge/SHOs of the concerned police stations to register the first information report and a copy of the first information report be sent to the learned Magistrate as per the provisions of Section 157, Cr.P.C.

3.2 That pursuant to the order passed by the learned Magistrate, the In-charge/SHOs of the concerned police stations lodged separate FIRs for the aforesaid offences for illegal

mining/transportation of sand, particulars of which are as under:

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

3.3 That thereafter the private appellants and others approached the High Court to quash the aforesaid FIRs

registered against them for illegal mining/transportation of sand by submitting the applications under Section 482, Cr.P.C. It was mainly contended on behalf of the private appellants and other violators that in view of Bar under Section 22 of the MMDR Act, the order passed by the learned Magistrate directing to register the FIRs is unsustainable and deserves to the quashed and set aside. It was also contended on behalf of the private appellants and other violators that once there was compounding of offence in exercise of powers under Rule 53 of the 1996 Rules and the violators paid the amount determined by permitting them to compound the offence, thereafter the Magistrate was not justified in directing to initiate fresh proceedings which would be hit by the principle of "double jeopardy". That by the impugned common judgment and order, the High Court has dismissed all the aforesaid applications relying upon the decision of this Court in the case of *Sanjay (supra)*.

4. Feeling aggrieved and dissatisfied with the common impugned judgment and order passed by the High Court in refusing to quash the FIRs filed against the private appellants and other violators, the original petitioners – violators have preferred the present appeals. Though, before the High Court,

the learned Public Prosecutor appearing on behalf of the State of Madhya Pradesh supported the order passed by the learned Magistrate directing to register/lodge FIRs, the State has preferred a separate special leave petition challenging the impugned judgment and order passed by the High Court confirming the order passed by the learned Magistrate. It is very surprising that despite supporting the order passed by the learned Magistrate before the High Court, the State of Madhya Pradesh has preferred the special leave petition, which shall be dealt with hereinbelow.

5. Shri Devadatt Kamat, learned Senior Advocate appearing on behalf of the private appellants has made following submissions:

i) initiation of criminal proceedings and filing of respective FIRs against the private appellants which have been filed/lodged pursuant to the order passed by the learned Magistrate in exercise of powers under Section 156(3), Cr.P.C. are hit by Section 22 and 23A of the MMDR Act, as well as, Rule 53 of the 1996 Rules;

ii) on a plain reading of Section 22, cognizance of the offence can be taken by the Magistrate only if there is a written complaint in that regard by the Mining Officer/authorised officer.

In the present case, admittedly, there is no written complaint made by the Mining Officer/authorised officer;

iii) MMDR Act does not contemplate the taking of suo motu cognizance by the Magistrate. The Magistrate does not have jurisdiction under the MMDR Act to direct the Mining Officer/police officer in-charge to register FIR under the penal provisions of the MMDR Act. Heavy reliance is placed on the decision of this Court in the case of *Sanjay (Supra)*, as well as, in the case of *Kanwar Pal Singh v. State of U.P., Criminal Appeal No. 1920 of 2019, decided on December 18, 2019;*

iv) Section 23A of the MMDR Act contemplates the compounding of offence under the MMDR Act. Therefore, the Rules made under the MMDR Act contain provisions for compounding of offence. Sub-section 2 of Section 23A places a bar on proceedings or further proceedings, when the offences have been compounded under sub-section (1). Therefore, once the proceedings have been compounded under the Act or Rules made thereunder, no further proceedings can lie. In the present case, the offences under the MMDR Act as against the private appellants were permitted to be compounded by the competent authority.

5.1 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to allow the present appals and quash the criminal proceedings initiated against the private appellants for the offences under Sections 379 and 414, IPC and Sections 4/21 of the MMDR Act.

6. Learned counsel appearing on behalf of the State of Madhya Pradesh has supported the private appellants – violators and has submitted that the order passed by the learned Magistrate directing to lodge/register FIRs for the offences under Sections 379 and 414, IPC and Sections 4/21 of the MMDR Act is unsustainable, though and as observed hereinabove, the learned Public Prosecutor appearing on behalf of the State of Madhya Pradesh supported the order passed by the learned Magistrate before the High Court.

One of the grounds stated in the memo of appeal is that the order passed by the learned Magistrate, confirmed by the High Court, impinges/affects the powers of the authorised person to compound the offence under Rule 18 of the 2006 Rules.

7. Before submissions made on behalf of the respective parties are considered, the decision of this Court in the case of *Sanjay (supra)* dealing with the provisions of the MMDR Act in which this

Court considered in detail the policy and object of the MMDR Act and the Rules made thereunder, is required to be referred to.

7.1 The question which arose for consideration before this Court was, whether the provisions contained in Sections 21, 22 and other Sections of the MMDR Act operate as bar against prosecution of a person who has been charged with allegation which constitutes offences under Sections 379/414 and other provisions of the Penal Code (IPC). The question which arose was, whether the provisions of the MMDR Act explicitly or impliedly exclude the provisions of the Penal Code (IPC) when the act of an accused is an offence both under the Penal Code and under the provisions of the MMDR Act. This Court considered in detail the policy, object and purpose of the MMDR Act in paragraphs 32 to 39, which read as under:

> **"32.** The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.

33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of PH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths.

36. In *M. Palanisamy* v. *State of T.N(2012) 4 CTC 1*, the amended provisions of the Tamil Nadu Mines and Minerals Concession Rules, 1959 was challenged on the ground that the said Rules for the purpose of preventing and restricting illegal mining, transportation and storage of minerals are ultra vires constitutional provisions and the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. Upholding the vires of the Rules, the Division Bench (one of us, Eqbal, J. as he then was) of the Madras High Court, elaborately discussed the object of restriction put in the illegal mining, transportation and storage of minerals including sand and after considering various reports observed thus: (CTC pp. 24-25, paras 21 & 23-24)

> "*21*. In order to appreciate the issue involved in these writ petitions, we may have to look at the larger picture — the impact of indiscriminate, uninterrupted sand quarrying on the already brittle ecological set-up of ours. According to expert reports, for thousands of years, sand and gravel have been used in the construction of roads and buildings. Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation.
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> *23*. The most important effects of in-stream sand mining on aquatic habitats are bed degradation and sedimentation, which can have substantial negative effects on aquatic life. The stability

of sand-bed and gravel-bed streams depends on a delicate balance between stream flow, the sediments supplied from the watershed and the channel form. Mining-induced changes in sediment supply and channel form disrupt the channel and the habitat development processes. Furthermore, movement of unstable substrates results in downstream sedimentation of habitats. The affected distance depends on the intensity of mining, particle sizes, stream flows, and channel morphology.

24. Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Bed degradation from in-stream mining lowers the elevation of stream flow and the floodplain water table, which in turn, can eliminate water table-dependent woody vegetation in riparian areas and decrease wetted periods in riparian wetlands. So far as locations close to the sea are concerned, saline water may intrude into the fresh waterbody."

37. In *Centre for Public Interest Litigation* v. *Union of India (2012) 3 SCC 1*, this Court, while observing that the natural resources are the public property and national assets, held as under: (SCC p. 53, para 75)

"*75*. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(*b*) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. Of course, environment laws enacted by Parliament and State Legislatures deal with specific natural resources i.e. forest, air, water, coastal zones, etc."

38. In *M.C. Mehta* v. *Kamal Nath (1997) 1 SCC 388*, this Court while considering the doctrine of public trust which extends to natural resources observed as under: (SCC pp. 407-08 & 413, paras 24-25 & 34)

"*24*. The ancient Roman Empire developed a legal theory known as the 'Doctrine of the Public Trust'. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free

and unimpeded use of the general public. Our contemporary concern about 'the environment' bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullius*) or by everyone in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan—proponent of the Modern Public Trust Doctrine—in an erudite article '*Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*', Michigan Law Review, Vol. 68, Part 1, p. 473, has given the historical background of the Public Trust Doctrine as under:

'The source of modern public trust law is found in a concept that received much attention in Roman and English law—the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature and need not be repeated in detail here. But two points should be emphasised. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties—such as the seashore, highways and running water—"perpetual use was dedicated to the public", it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.'

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

'Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property

subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.'

* * *

34. Our legal system—based on English common law—includes the Public Trust Doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

39. In *Intellectuals Forum* v. *State of A.P (2006) 3 SCC 549*, this Court while balancing the conservation of natural resources vis-à-vis urban development observed as under: (SCC p. 572, para 67)

"*67*. The responsibility of the State to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of 'State responsibility' for pollution emanating within one's own territories (*Corfu Channel case*[14]). This responsibility is clearly enunciated in the *United Nations Conference on the Human Environment*, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant clause of this declaration in the present context is para 2, which states:

'The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.'

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area."

7.2 This Court further observed in paragraphs 60 & 69 as under:

"60. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of

the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all the living creatures. In view of the constitutional provisions, the doctrine of public trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, water and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.

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."

7.3 That thereafter, after considering the relevant provisions of the MMDR Act, this Court opined that there is no complete and absolute bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offence. Ultimately, this Court concluded in paragraphs 72 and 73 as under:

"72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand,

gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(*d*) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. 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 Magistrates concerned to proceed accordingly."

7.4 Thus, as held by this Court, the prohibition contained in Section 22 of the MMDR Act against prosecution of a person except on a written complaint made by the authorised officer in this behalf would be attracted only when such person is sought to be prosecuted for contraventions of Section 4 of the MMDR Act

and not for any act or omission which constitutes an offence under the Penal Code.

8. However, it is required to be noted that in the case of *Sanjay (supra),* this Court had no occasion and/or had not considered when and at what stage the bar under Section 22 of the MMDR Act would be attracted. The further question which is required to be considered is, when and at what stage the Magistrate can be said to have taken cognizance attracting the bar under Section 22 of the MMDR Act?

8.1 While considering the aforesaid issue, Section 22 of the MMDR Act is required to be referred to, which is 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."

Reading the aforesaid provision would show that cognizance of any offence punishable under the MMDR Act or the Rules made thereunder shall be taken only upon a written complaint made by a person authorised in this behalf by the Central Government or the State Government. Therefore, on a fair

reading of Section 22 of the MMDR Act, the bar would be attracted when the Magistrate takes cognizance.

9. Let us now consider the question in the light of judicial pronouncements on the point.

9.1. In the case of *Krishna Pillai v. T.A. Rajendran, 1990 (Supp) SCC 121*, after considering a five Judge Bench judgment of this Court in the case of *A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC* 500, it is observed in paragraph 4 as under:

> **"4.** Taking cognizance has assumed a special meaning in our criminal jurisprudence. We may refer to the view taken by a five Judge bench of this Court in *A.R. Antulay* v. *Ramdas Sriniwas Nayak (supra)* at p. 530 (para 31) of the reports this Court indicated:
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> > "When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 CrPC After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court."
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> The extract from the Constitution Bench judgment clearly indicates that filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint....."

9.2 In the case of *Manohar M. Galani v. Ashok N. Advani (1999) 8 SCC 737*, when the bar under Section 195 Cr. P.C. was pressed

into service and the High Court quashed the complaint and enquiry on the basis of the FIR registered by the complainant, while setting aside the order passed by the High Court, this Court accepted the submission on behalf of the State that the bar under Section 195 Cr.P.C. can be gone into at the stage when the court takes cognizance of the offence and investigation on the basis of the information received could not have been quashed and an investigating agency cannot be throttled at this stage from proceeding with the investigation particularly when the charges are serious and grave.

9.3 In the case of *S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited, (2008) 2 SCC 492, in paragraphs 19 to 34*, it is observed and held as under:

> **"19.** The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.
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> **20.** "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case

and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

21. Chapter XIV (Sections 190-199) of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) thereof is material and may be quoted in extenso:

> "190. *Cognizance of offences by Magistrates* —(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—
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> (*a*) upon receiving a complaint of facts which constitute such offence;
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> (*b*) upon a police report of such facts;
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> (*c*) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

22. Chapter XV (Sections 200-203) relates to "Complaints to Magistrates" and covers cases before actual commencement of proceedings in a court or before a Magistrate. Section 200 of the Code requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses on oath. Section 202, however, enacts that a Magistrate is not bound to issue process against the accused as a matter of course. It enables him before the issue of process either to inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether there is sufficient ground for proceeding further. The underlying object of the inquiry under Section 202 is to ascertain whether there is *prima facie* case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is, no doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is *sufficient ground for proceeding with the matter* and not whether there is *sufficient ground for conviction of the accused.*

23. Then comes Chapter XVI (Commencement of proceedings before Magistrates). This Chapter will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV. Section 204, whereunder process can be issued, is another material provision which reads as under:

> "204. *Issue of process.*—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—
>
> (*a*) a summons case, he shall issue his summons for the attendance of the accused, or

(*b*) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87."

24. From the above scheme of the Code, in our judgment, it is clear that "Initiation of proceedings", dealt with in Chapter XIV, is different from "Commencement of proceedings" covered by Chapter XVI. For commencement of proceedings, there must be initiation of proceedings. In other words, initiation of proceedings must precede commencement of proceedings. Without initiation of proceedings under Chapter XIV, there cannot be commencement of proceedings before a Magistrate under Chapter XVI. The High Court, in our considered view, was not right in equating initiation of proceedings under Chapter XIV with commencement of proceedings under Chapter XVI.

25. Let us now consider the question in the light of judicial pronouncements on the point.

26. In *Supdt. & Remembrancer of Legal Affairs* v. *Abani Kumar Banerjee, AIR 1950 Cal. 437,* the High Court of Calcutta had an occasion to consider the ambit and scope of the phrase "taking cognizance" under Section 190 of the Code of Criminal Procedure, 1898 which was in pari materia with Section 190 of the present Code of 1973. Referring to various decisions, Das Gupta, J. (as His Lordship then was) stated: (AIR p. 438, para 7)

"*7*. … What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(*a*) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the

subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

27. *R.R. Chari* v. *State of U.P. AIR 1951 SC 207* was probably the first leading decision of this Court on the point. There, the police, having suspected the appellant-accused to be guilty of offences punishable under Sections 161 and 165 of the Penal Code (IPC) as also under the Prevention of Corruption Act, 1947, applied to the District Magistrate, Kanpur to issue warrant of arrest on 22-10-1947. Warrant was issued on the next day and the accused was arrested on 27-10-1947.

28. On 25-3-1949, the accused was produced before the Magistrate to answer the charge-sheet submitted by the prosecution. According to the accused, on 22-10-1947, when warrant for his arrest was issued by the Magistrate, the Magistrate was said to have taken cognizance of offence and since no sanction of the Government had been obtained before that date, initiation of proceedings against him was unlawful. The question before the Court was as to when cognizance of the offence could be said to have been taken by the Magistrate under Section 190 of the Code. Considering the circumstances under which "cognizance of offence" under sub-section (1) of Section 190 of the Code can be taken by a Magistrate and referring to *Abani Kumar Banerjee (supra)*, the Court, speaking through Kania, C.J. stated: (*Chari case (supra)*, AIR p. 208, para 3)

"*3*. It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in CrPC on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process. It is important to remember that in respect of any cognizable offence, the police, at the initial stage when they are investigating the matter, can arrest a person without obtaining an order from the Magistrate. Under Section 167(*b*) CrPC the police have of course to put up the person so arrested before a Magistrate within 24 hours and obtain an order of remand to police custody for the purpose of further investigation, if they so desire. But they have the power to arrest a person for the purpose of investigation without approaching the Magistrate first. Therefore, in cases of cognizable offence before proceedings are initiated and while the matter is under investigation by the police the suspected

person is liable to be arrested by the police without an order by the Magistrate."

29. Approving the observations of Das Gupta, J. in *Abani Kumar Banerjee(supra),* this Court held that it was on 25-3-1949 when the Magistrate issued a notice under Section 190 of the Code against the accused that he took "cognizance" of the offence. Since before that day, sanction had been granted by the Government, the proceedings could not be said to have been initiated without authority of law.

30. Again in *Narayandas Bhagwandas Madhavdas* v. *State of W.B.AIR 1959 SC 1118,* this Court observed that when cognizance is taken of an offence depends upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuance of a search warrant for the purpose of an investigation or a warrant of arrest of the accused cannot by itself be regarded as an act of taking cognizance of an offence. It is only when a Magistrate applies his mind for proceeding under Section 200 and subsequent sections of Chapter XV or under Section 204 of Chapter XVI of the Code that it can be positively stated that he had applied his mind and thereby had taken cognizance of an offence (see also *Ajit Kumar Palit* v. *State of W.B. AIR 1963 SC 765* and *Hareram Satpathy* v. *Tikaram Agarwala, (1978) 4 SCC 58*).

31. In *Gopal Das Sindhi* v. *State of Assam*, AIR 1961 SC 986, referring to earlier judgments, this Court said: (AIR p. 989, para 7)

"*7.* ... We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code."

32. In *Nirmaljit Singh Hoon* v. *State of W.B., (1973) 3 SCC 753,* the Court stated that it is well settled that before a Magistrate can be said to have taken cognizance of an offence under Section 190(1)(*a*) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that section. Where, however, he

applies his mind only for ordering an investigation under Section 156(3) or issues a warrant for arrest of the accused, he cannot be said to have taken cognizance of the offence.

33. In *Darshan Singh Ram Kishan* v. *State of Maharashtra (1971) 2 SCC 654*, speaking for the Court, Shelat, J. stated that under Section 190 of the Code, a Magistrate may take cognizance of an offence either (*a*) upon receiving a complaint, or (*b*) upon a police report, or (*c*) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been said, taking cognizance does not involve any formal action or indeed action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, thus, takes place at a point when a Magistrate first takes judicial notice of an offence.

34. In *Devarapalli Lakshminarayana Reddy* v. *V. Narayana Reddy (1976) 3 SCC 252,* this Court said: (SCC p. 257, paras 13-14)

> "*13*. It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words 'may take cognizance' which in the context in which they occur cannot be equated with 'must take cognizance'. The word 'may' gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.
>
> *14*. This raises the incidental question: What is meant by 'taking cognizance of an offence' by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in Clauses (*a*), (*b*) and (*c*) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV

of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(*a*). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence."

(see also M.L. Sethi v. R.P. Kapur, AIR 1967 SC 528).

9.4 In the case of *Fakhruddin Ahmad v. State of Uttaranchal, (2008) 17 SCC 157, in paragraphs 9 to 17*, it is observed and held as under:

"9. Before examining the rival contentions, we may briefly refer to some of the relevant provisions in the Code. Chapter XIV of the Code, containing Sections 190 to 199 deals with the statutory conditions requisite for initiation of criminal proceedings and as to the powers of cognizance of a Magistrate. Sub-section (1) of Section 190 of the Code empowers a Magistrate to take cognizance of an offence in the manner laid therein. It provides that a Magistrate may take cognizance of an offence either (*a*) upon receiving a complaint of facts which constitute such offence; or (*b*) upon a police report of such facts; or (*c*) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed.

10. Chapter XV containing Sections 200 to 203 deals with "Complaints to Magistrates" and lays down the procedure which is required to be followed by the Magistrate taking cognizance of an offence on complaint. Similarly, Chapter XVI deals with "Commencement of Proceedings before Magistrates". Since admittedly, in the present case, the Magistrate has taken cognizance of the complaint in terms of Section 190 of the Code, we shall confine our discussion only to the said provision. We may, however, note that on receipt of a complaint, the Magistrate has more than one course open to him to determine the procedure and the manner to be adopted for taking cognizance of the offence.

11. One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under Section 200 or Section 202 of the Code, he may order an investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case. When such an order is

made, the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under Section 190(1)(*b*) of the Code and issue process straightaway to the accused. However, Section 190(1)(*b*) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against the accused. Undoubtedly, the Magistrate can ignore the conclusion(s) arrived at by the investigating officer.

12. Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under Section 173(2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not.

13. The next incidental question is as to what is meant by the expression "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190 of the Code?

14. The expression "cognizance" is not defined in the Code but is a word of indefinite import. As observed by this Court in *Ajit Kumar Palit* v. *State of W.B., AIR 1963 SC 765* (AIR p. 770, para 19)

> "*19*. … The word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means—become aware of and when used with reference to a court or Judge, to take notice of judicially."

Approving the observations of the Calcutta High Court in *Emperor* v. *Sourindra Mohan Chuckerbutty, ILR (1910) 37 Cal. 412* (at ILR p. 416), the Court said that

> "taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, *applies his mind* to the suspected commission of an offence."
>
> (emphasis supplied)

15. Recently, this Court in *Chief Enforcement Officer* v. *Videocon International Ltd.*[4] speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase "taking cognizance" under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in *Supdt. & Remembrancer of Legal Affairs* v. *Abani Kumar Banerjee, AIR 1950 Cal. 437* which

were approved by this Court in *R.R. Chari* v. *State of U.P., AIR 1951 SC 207.* The observations are: (*Abani Kumar Banerjee case(supra),* AIR p. 438, para 7)

> "7. … What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(*a*) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

16. From the aforenoted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by "taking cognizance". Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and *applied his mind* to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate *applies his mind* and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender."

9.5 In the case of *Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64*, it is observed in paragraphs 34 to 37 as under:

> **"34.** The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage

of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term "cognizance" has not been defined either in the 1988 Act or CrPC, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially".

35. In *R.R. Chari* v. *State of U.P AIR 1951 SC 207*, the three-Judge Bench approved the following observations made by the Calcutta High Court in *Supt. and Remembrancer of Legal Affairs* v. *Abani Kumar Banerjee AIR 1950 Cal. 437,*: (AIR p. 438, para 7)

"*7.* … What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(*a*), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,— proceeding under Section 200, and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

36. In State of W.B. v. *Mohd. Khalid (1995) 1 SCC 684*, the Court referred to Section 190 CrPC and observed: (SCC p. 696, para 43)

"*43.* … In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

37. In State of Karnataka v. *Pastor P. Raju (2006) 6 SCC 728*, this Court referred to the provisions of Chapter XIV and Sections 190 and 196(1-A) CrPC and observed: (SCC p. 732, para 8)

"*8.* … There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the

police on completion of investigation, as contemplated by Section 173 CrPC. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) CrPC and no illegality of any kind would be committed."

9.6 In the case of *Anil Kumar v. M.K. Aiyappa (2013) 10 SCC 705,* it is observed and held in paragraphs 12 to 15 as under:

"12. We will now examine whether the order directing investigation under Section 156(3) CrPC would amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act will have to be construed as post-cognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act.

13. The expression "cognizance" which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in *State of U.P.* v. *Paras Nath Singh (2009) 6 SCC 372,* and this Court expressed the following view: (SCC pp. 375, para 6)

"*6.* ... '*10.* ... And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the

conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to *Black's Law Dictionary* the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

14. In *State of W.B.* v. *Mohd. Khalid (1995) 1 SCC 684*, this Court has observed as follows:

"*13*. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.

The meaning of the said expression was also considered by this Court in *Subramanian Swamy case (2012) 3 SCC 64*.

15. The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3)

> CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."

10. Having heard learned counsel for the parties and having perused the relevant provisions of the law as also the judicial pronouncements, we are of the view that the High Court has not committed any error in not quashing the order passed by the learned Magistrate and not quashing the criminal proceedings for the offences under Sections 379 and 414. It is required to be noted that the learned Magistrate in exercise of the suo motu powers conferred under Section 156(3), Cr.P.C. directed the concerned In-charge/SHO of the police station to lodge/register the crime case/FIR and directed initiation of investigation and directed the concerned In-charge/SHO of the police station to submit a report after due investigation.

Applying the law laid down by this Court in the cases referred to hereinabove, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged

offences attracting bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173, Cr.P.C.

10.1 At this stage, it is required to be noted that as per Section 21 of the MMDR Act, the offences under the MMDR Act are cognizable. 10.2 As specifically observed by this Court in the case of *Anil Kumar (supra)*, 'when a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage'.

10.3 Even as observed by this Court in the case of *R.R. Chari (supra)*, even the order passed by the Magistrate ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. As observed by the Constitution

Bench of this Court in the case of *A.R. Antulay(supra)*, filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Therefore, when an order is passed by the Magistrate for investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case, when such an order is made the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. That thereafter the investigating officer is required to send report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage the question with respect to taking cognizance by the learned Magistrate would arise.

11. Now so far as the submission on behalf of the private appellants-violators that in view of the fact that violators were permitted to compound the violation in exercise of powers under Rule 53 of the 1996 Rules or Rule 18 of the 2006 Rules and the violators accepted the decision and deposited the amount of

penalty determined by the appropriate authority for compounding the offences/violations, there cannot be any further criminal proceedings for the offences under Sections 379 and 414 IPC and Sections 4/21 of the MMDR Act and the reliance placed on Section 23A of the MMDR Act is concerned, it is true that in the present case the appropriate authority determined the penalty under Rule 53 of the 1996 Rules/Rule 18 of the 2006 Rules, which the private appellants-violators paid and therefore the bar contained in sub-section 2 of Section 23A of the MMDR Act will be attracted. Section 23A as it stands today has been brought on the Statute in the year 1972 on the recommendations of the Mineral Advisory Board which provides that any offence punishable under the MMDR Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify. Sub-section 2 of Section 23A further provides that where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the

offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith. Thus, the bar under sub-section 2 of Section 23A shall be applicable with respect to offences under the MMDR Act or any rule made thereunder. However, the bar contained in sub-section 2 of Section 23A shall not be applicable for the offences under the IPC, such as, Section 379 and 414 IPC. In the present case, as observed and held hereinabove, the offences under the MMDR Act or any rule made thereunder and the offences under the IPC are different and distinct offences. Therefore, as in the present case, the mining inspectors prepared the cases under Rule 53 of the 1996 Rules and submitted them before the mining officers with the proposals of compounding the same for the amount calculated according to the concerned rules and the Collector approved the said proposal and thereafter the private appellants-violators accepted the decision and deposited the amount of penalty determined by the Collector for compounding the cases in view of sub-section 2 of Section 23A of the MMDR Act and the 1996 rules and even the 2006 rules are framed in exercise of the powers under Section 15 of the MMDR Act, criminal complaints/proceedings for the offences under Sections 4/21 of

the MMDR Act are not permissible and are not required to be proceeded further in view of the bar contained in sub-section 2 of Section 23A of the MMDR Act. At the same time, as observed hereinabove, the criminal complaints/proceedings for the offences under the IPC – Sections 379/414 IPC which are held to be distinct and different can be proceeded further, subject to the observations made hereinabove.

However, our above conclusions are considering the provisions of Section 23A of the MMDR Act, as it stands today. It might be true that by permitting the violators to compound the offences under the MMDR Act or the rules made thereunder, the State may get the revenue and the same shall be on the principle of person who causes the damage shall have to compensate the damage and shall have to pay the penalty like the principle of polluters to pay in case of damage to the environment. However, in view of the large scale damages being caused to the nature and as observed and held by this Court in the case of *Sanjay (supra)*, the policy and object of MMDR Act and Rules are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being

caused to the nature and considering the observations made by this Court in the aforesaid decision, reproduced hereinabove, and when the violations like this are increasing and the serious damage is caused to the nature and the earth and it also affects the ground water levels etc. and it causes severe damage as observed by this Court in the case of *Sanjay (supra)*, reproduced hereinabove, we are of the opinion that the violators cannot be permitted to go scot free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.

It is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the nature. As observed by this Court in the case of *Sanjay (supra)*, excessive in-stream sand-and-gravel mining from river beds and like resources causes the degradation of rivers. It is further observed that apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Even otherwise, sand/mines is a public property and

the State is the custodian of the said public property and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological imbalance and causing damages to the nature in any form. As the provisions of Section 23A are not under challenge and Section 23A of the MMDR Act so long as it stands, we leave the matter there and leave it to the wisdom of the legislatures and the concerned States.

12. Now so far as the appeal preferred by the State on the premise that the order passed by the learned Magistrate, confirmed by the High Court, affects the powers of the authorised person to compound the offence, in exercise of powers under Rule 53 of the 1996 Rules and Rule 18 of the 2006 Rules is concerned, the same is absolutely misconceived. By the order passed by the learned Magistrate, confirmed by the High Court, by no stretch of imagination, it can be said that directing to file the first information report/crime case for the offences under the IPC and even for the offences under the MMDR Act and the rules made

thereunder, it affects any of the powers of the authorised person to compound the offence. In fact, in view of the decision of this Court in the case of *Sanjay (supra)*, in which this Court has specifically observed and held that so far as the offence under the IPC is concerned, there shall not be any bar under Section 22 of the MMDR Act and when before the High Court the State supported the order passed by the learned Magistrate and rightly so and when the impugned judgment and order passed by the High Court is in favour of the State, as such, the State ought not to have filed the special leave petition/appeal.

13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made

thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be

sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.

14. In view of the above and for the reasons stated above, the appeals filed by the violators/private appellants are partly allowed, to the extent quashing the proceedings for the offences under the MMDR Act – Sections 4/21 of the MMDR Act only. The appeal preferred by the State of Madhya Pradesh stands dismissed.

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
DECEMBER 03, 2020

.....J.
[M.R. SHAH]