

## Muslim vs State Of U.P. And Another on 4 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15205

Court No. - 76

Case :- APPLICATION U/S 482 No. - 3289 of 2025

Applicant :- Muslim

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Saurabh Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar,J.

1. Heard learned counsel for the applicant and the learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 07.02.2020, the cognizance order dated 19.03.2021, as well as the entire proceedings in Case No. 3658 of 2021, titled State v. Deendayal and Others, arising out of Case Crime No. 0040 of 2019, under Sections 379, 411, 420, 468, 471 I.P.C., Section 3/57/70 of the Uttar Pradesh Sub Minerals (Concession) Manual-2021, and Section 4/21 of the Mines and Minerals (Development & Regulation) Act, 1957, registered at P.S. Hathinala, District Sonbhadra, pending trial before the Court of the Chief Judicial Magistrate, Sonbhadra.

3. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. It is further contended that the trial court had earlier ordered the release of the applicant's vehicle on 17.10.2019, based on a letter dated 17.01.2020 issued by the office of the Collector (Minerals Branch), District Sarguja, Chhattisgarh. It is argued that this letter does not form part of the FIR, and as such, any prosecution arising from the FIR is rendered vitiated under the law. He further submits that under Section 22 of Mines and Minerals (Development and Regulation) Act, 1957, the Magistrate is barred in taking cognizance in a report filed under Section

173 Cr.P.C. by the police. The next argument is that a complaint under this Act can only be made through an authorized person mandated under this Act. He therefore submits that the cognizance order is bad in law. Learned counsel has relied upon a judgment of co-ordinate Bench of this Court, vide order dated 24.04.2023 passed in Application U/s 482 No. 10940 of 2023. Relevant para of said judgment is quoted hereinbelow:-

"Having considered the rival submission made by the parties and taking into consideration the provision contained in Section 22 of the Mines and Minerals (Development and Regulations) Act, 1957, which provides that "No Court shall taken 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 State Government" and in view of the provision contained in Section 74 of the U.P. Minor Minerals (Consession) rules, 1963 which provides "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", order dated 09.01.2023 taking cognizance of the offence based on the charge-sheet dated 13.06.2017 and summoning the applicants under Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3/57/70 of the U.P. Minor Minerals (Concession) Rule, 1963 is liable to be set aside, however it is further open for the competent authority authorised in this behalf by the Central Government or the State Government to file a complaint in writing by an authorised person under the Mines and Minerals (Development and Regulations) Act, 1957 and further, if a complaint in writing of the facts constituting such offence by the District Officer or by any authorised officer in this behalf is filed under the U.P. Minor Minerals (Concession) Rules, 1963, the learned Magistrate may proceed in accordance with law under Section 4/21 of the Mines and Minerals (Development and Regulations) Act, 1957 and Sections 3/57/70 of the U.P. Minor Minerals (Concession) Rules, 1963.

In view of the foregoing discussion, entire proceedings of Case No.160 of 2023 (State Vs. Mohd. Kamal @ Raju and others) arising out of Case Crime No. 0169 of 2017, under Sections 3/57/70 of U.P. Minor Minerals (Concession) Rule, 1963 and Sections 4/21 of Mines and Minerals (Development and Regulations) Act, 1957, Police Station Jahanganj, District Farrukhabad, based on the charge-sheet stands quashed."

4. Per-contra, learned A.G.A. submits that similar controversy has been decided by the Supreme Court in Kanwar Pal Singh v. State of U.P. & Anr, arising out of S.L.P. (Criminal) No.10707 of 2019. Paragraph 12 of the aforesaid judgment is extracted herein below:

"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 authorization. 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 the 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."

5. In view of aforesaid observation, the instant application is disposed of by giving liberty to the applicant to raise grounds, taken if any, before the trial Court at the stage of framing of charge and thereafter, the trial court shall proceed with the case in accordance with law held in Kanwar Pal Singh's case (supra). So far as other Sections are concerned, the learned trial Court shall take conscious decision in accordance with law.

Order Date :- 4.2.2025 Shafique Justice Vinod Diwakar