

# **Rajesh Mishra vs State Of U.P. And Another on 1 April, 2025**

**Author: Saurabh Srivastava**

**Bench: Saurabh Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44585

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 10422 of 2025

Applicant :- Rajesh Mishra

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

Counsel for Applicant :- Surendra Kumar Chaubey

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard learned counsel for the parties.

2. Present petition has been preferred with the prayer to quash the entire proceeding arising out of charge sheet dated 28.7.2016 alongwith cognizance/summoning order dated 20.8.2016 passed by learned Chief Judicial Magistrate, Mirzapur in Case no. 4933 of 2016 (State vs. Rajesh Mishra) arising out of Case Crime no. 577 of 2016, under Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984, PS- Kotwali Chunar, District- Mirzapur pending in the court of learned Chief Judicial Magistrate, Mirzapur.

3. Learned counsel for applicant submitted that opposite party no. 2 lodged a FIR alleging therein that applicant is carrying out illegal mining over the plot in question whereupon mining lease has been granted to some other person. Pursuant to the same, after conclusion of investigation, charge sheet has been preferred against the applicant whereupon cognizance has been taken up by learned concerned court vide order dated 20.08.2016 which has been challenged through the instant petition.

4. It is contended by learned counsel for the applicant that as per Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, no court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon the complaint in writing made by a person authorized in this behalf by Central Government or State Government, therefore, since the aforesaid case is arising out of mining operation, hence only complaint can be filed against any person committing any offence under Mines Act, 1957.

5. Per contra, learned AGA vehemently opposed the prayer sought through the instant application but could not satisfactorily rebut the same.

6. In the recent judgment passed by co-ordinate Bench of this Court in Application u/s 482 no. 11544 of 2019 (Ajay Kumar vs. State of U.P. and others) dated 14.05.2024, similar matter has been deal with. For ready reference relevant portion of the judgment is quoted herein below:

"7. So far as the second question is concerned, Section 22 of the Act, 1957 is very clear which provides that no Court shall take cognizance for the offence under the Act, 1957, unless the complaint is filed in writing by an officer authorised by Central Government or State Government, but in the present case, learned Magistrate has taken cognizance on the charge sheet filed by the police under the provision of the Act, 1957.

8. In the case of Kanwar Pal Singh Vs. State of Uttar Pradesh and another reported in (2020) 14 SCC 331, Hon'ble Apex Court observed that the Magistrate can take cognizance on the basis of charge sheet only for the offence under the Indian Penal Code, but the cognizance for the offence under the Act, 1957 can be taken only on the basis of complaint filed by authorised officer as per the provisions of Act, 1957. Paragraph 16 of this judgment is being quoted as under:-

"16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 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."

9. The Apex Court again in the judgment of Jayant and others Vs. State of Madhya Pradesh reported in (2021) 2 SCC 670, observed that even if the charge sheet is filed by the police after the investigation then for the offence under the Indian Penal Code learned Magistrate can take cognizance but for the offence under the Act, 1957, learned Magistrate cannot take cognizance on the basis of that charge sheet and it is further observed that the Magistrate can take cognizance only when the complaint is filed by the authorised officer along with that charge sheet for the offence under the Act, 1957. Paragraphs 21.3 and 21.4 of the above judgment are being quoted as under:-

"21.3. 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.

21.4. 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 In-charge of the police station/investigating officer submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned 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."

10. In view of the above legal position, it is clear that for the offence under the Act, 1957, the concerned court can take cognizance only on the basis of complaint filed by authorised officer but in the present case learned Magistrate had taken cognizance on the charge sheet filed by the police under Section 4/21 of the Act, 1957, therefore, the cognizance order dated 13.12.2016 is barred by Section 22 of the Act, 1957, therefore, deserves to be set aside. Accordingly, set aside and consequential proceeding in pursuance of the above cognizance order dated 13.12.2016 is also quashed.

11. However it is open, if the authorised officer files a complaint along with police report submitted by Investigating Officer, then it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the offence under the Act, 1957.

12. With the aforesaid observation, the present application is allowed."

7. In the light of aforesaid discussion, argument raised by learned counsel for the petitioners seems to be forceful and as such in the light of judgment rendered by Hon'ble Apex Court in case of Kanwar Pal Singh (supra), Jayant and others (supra) and judgment rendered by co-ordinate Bench of this Court in case of Ajay Kumar (supra), entire proceeding arising out of charge sheet dated 28.07.2016 along with cognizance/summoning order dated 20.08.2016 passed by learned Chief Judicial Magistrate, Mirzapur in case no. 4933 of 2016 (State vs. Rajesh Mishra) arising out of Case Crime no. 577 of 2016 under Section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of Prevention of Damage to Public Property Act, 1984, PS- Kotwali Chunar, District Mirzapur, is hereby quashed.

8. The instant petition stands allowed accordingly.

9. However, it is made clear that above mentioned direction will not preclude the authorities concerned to proceed afresh against the applicant, if required, in accordance with proper procedure available at law.

Order Date :- 1.4.2025 Shaswat