

# Ramkrishna Vyankatesh Khot And Ors vs The Circle Officer Malwan And Ors on 24 November, 2021

**Author: Madhav J. Jamdar**

**Bench: G.S. Patel, Madhav J. Jamdar**

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 7775 OF 2021

Ramkrishna Vyankatesh Khot & Ors  
Versus  
The Circle Officer Malwan & Ors

...Petitioners  
...Respondents

Mr NV Walawalkar, Senior Advocate i/b Suresh M Sabrad, for the  
Petitioner.  
Mr PG Sawant, AGP, for the Respondent No.1.

CORAM G.S. Patel &  
Madhav J. Jamdar, JJ.

DATED: 24th November 2021

PC:-

1. Rule.

2. Respondent Nos. 1 to 5 and 8 and 9 waive service.

3. The complaint from three Petitioners, all agriculturists and residents of village Kalse-Baugwadi, Taluka Malwan, District Sindhudurg is that the authorities in question have refused to entertain their complaints regarding theft of sand, illegal sand mining and illegal sand dredging, all offences covered by Sections 378 and 379 of the Indian Penal Code.

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4. We do not believe that it is necessary at this stage to consider the individual complaints made by the Petitioners. The material on record, particularly in the form of photographs shown to us today, as also the reports and orders annexed to the Petition from Exhibits "A" to "D" prima facie establish that there is indeed such illegal activity. The response of the Respondents has been that an offence can be registered only when so informed by authorized Revenue Officer under the Mines and Mineral (Development and Regulation) Act, 1957.

5. Mr. Walawalkar, learned Senior Counsel for the Petitioners, draws our attention to the decision of the Supreme Court in State (NCT of Delhi) v Sanjay.<sup>1</sup> An identical argument appears to have been taken before the Supreme Court. The decision of the Supreme Court leaves absolutely no room for controversy. The reason purportedly given by the Respondents in this case, that they require information or a report from Revenue Officers authorised under the Act, and that without this they are unable to take any action, has been in terms rejected by the Supreme Court. In paragraphs 69 to 73, the Supreme Court said:

"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 river bed. 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 eco-system of the rivers and safety of bridges.

<sup>1</sup> (2014) 9 SCC 772.

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70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach

and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

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

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72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence 24th November 2021 904-ASWP-7775-2021.DOC without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be

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

(Emphasis added)

6. In this view of the matter, we are prima facie satisfied that the complaints made by the Petitioners must be acted on and appropriate steps be taken to stop the illegal excavations of sand from the riverbed of Karli river.

7. There is also a prayer to direct the Hydrographer/Senior Geologist of Sindhudurg District to inspect the riverbed and to make a report.

8. We are inclined to pass an interim relief in terms of prayer clauses (b) and (c) which reads thus:-

"(b) to pass appropriate writ, order or direction directing Respondents Nos. 1 to 9 to take immediate steps to stop illegal excavation of sands from the river bed of Karli River, Near Kalse Village, Baugwadi, Taluka Malwan, District Sindhudurg;

(c) to direct the hydrographer/Senior Geologist, of District Sindhudurg to inspect the river bed of Karli river at Kalse, Taluka Malwan and Walawal, Taluka Kudal, Taluka Kudal to measure the depth of the River Karli and to make a report of the same to this Hon'ble Court;"

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9. The 7th Respondent-Hydrographer of the Maharashtra Maritime Board will cause an inspection to be made of the riverbed of Karli river at Kalse-Baugwadi, Taluka Malwan and Walawal, Taluka Kudal, District Sindhudurg to measure the depth of the river and to make a report to this Court.

10. The Report of the Hydrographer should be submitted to us by 17th December 2021.

11. In the meantime, Respondent Nos. 1, 2, 5, 8 and 9 will immediately act on the complaints made by the Petitioners and initiate the necessary proceedings or actions inter alia under the IPC and the Maharashtra Land Revenue Code, following the order of the Supreme Court.

12. In addition, the Collector will submit a report by 17th December 2021 regarding compliance with this order.

13. We list the matter on 20th December 2021.

14. Leave to amend/to add further particulars and prayers. The amendment also may include colour copies of photographs that were shown to us today. Amendment be carried out within the course of the day in the Court without need of re-verification. A copy of the amended Writ Petition will be given to learned Government Pleader.

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15. Service on the remaining Respondents may be effected by private service including by courier.

16. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

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