

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Writ Petition No.11-A of 2018

JUDGMENT

Date of hearing.....22..10.2019.....

Petitioner(s) ...(Wajid Khan and others) by Mr. Taimoor Afzal Khan, Advocate.....

Respondent(s)...(The State etc)by Sardar Muhammad Asif, Assistant Advocate General alongwith Mohsin Ali Khan, Deputy Director, Mineral Development, Hazara Division, Abbottabad.....

IJAZ ANWAR, J.- Through this single judgment, this Court shall also dispose of two connected **Writ Petition No.808-A/2017**, titled '*Amjid Saleem Vs. The State and others*' and **Writ Petition No.1428-A/2018**, titled '*Ahmad Khan Vs. The State and others*', as common questions of law and facts are involved therein.

2. In essence, the petitioners seek quashment of F.I.R Nos. 317 dated 12.12.2017 under sections 54, 83 KPK Mineral Sector Governance Act, 2016 and sections 506/186/188 PPC, PS Khaki, F.I.R No.178 dated 20.07.2017 under section 54 KPK Mineral Sector Governance Act, 2016, PS Khaki and F.I.R No.211 dated

11.11.2018 under sections 56, 86 KPK Mineral Sector Governance Act, 2017 registered against petitioners on the report of respondents.

3. Arguments heard and record perused.

4. Earlier for the effective regulations of Mines and Minerals, Mines and Oil Field and Mineral Development (Government Control Act) 1948 was in the field, which was repealed when the Khyber Pakhtunkhwa Minerals Sector Governance Act, 2016 was promulgated, which was further amended and repealed vide Khyber Pakhtunkhwa Minerals Governance Act, 2017 (Khyber Pakhtunkhwa Act No.XXXVI of 2017) when it was notified on 15th November, 2017. The aim and object of promulgation is to provide for effective regulation of minerals, mines and mining in the Province of Khyber Pakhtunkhwa, through development of the sector by establishment of transparent administrative, management, legal and fiscal frameworks and to cater for internationally competitive, stable, conducive and enabling business environment for investments in the minerals sector thereof. Since in the instant case, the FIR is registered alleging violation of sections 54 and 83 of the Minerals Sector Governance Act, 2016, as such,

the relevant provisions of the Repealed Act of 2016 would be reproduced:

“ S.2 (q) **Licensing Authority means:-**

- (i) In relation to large scale mining and small scale mining, the Committee constituted under section 6 of this Act; and
- (ii) In relation to minor minerals, the Director General Mines and Minerals.”

“54.Unauthorized mining.---(1) If any person, directly or indirectly, starts prospecting, exploring or mining any mineral outside the area granted to him under a mineral title or in any area for which he has not obtained a mineral title or if any person obstructs free access of a holder of a mineral title to the licensed or leased area or directly or indirectly tries to interfere with the prospecting or mining operations by a holder of a mineral title, he shall be punishable with imprisonment for a term of minimum six months which may extend up to three years, and a fine of minimum five hundred thousand which may extend up to two million, or with both.

(2)The Licensing Authority shall appoint a technical committee to assess the losses incurred due to obstruction, hindrance, or closure of the prospecting, exploration or mining operations caused by any person, and shall proceed to recover the assessed losses from such person, which in case of default, shall be recovered as arrears of land revenue.

(3)In the event of any unauthorized mining, obstruction, hindrance or interference in the prospecting, exploration or mining operations, the administration of the locality, on request of the Licensing Authority, shall take all necessary steps to stop the illegal acts to ensure smooth operations of the holder of the mineral title.

(4)Notwithstanding anything contained in sub-section (1), the Licensing Authority shall have the power to stop unauthorized work in such manner as it may deem fit and recover in addition to the penalty, the pit-mouth value of the mineral so excavated from the person responsible for such un-authorized work.”

In Schedule V & VI of the Mineral Sector Governance Act, 2016, certain offences were mentioned relating to the violation of provisions of the Khyber Pakhtunkhwa Mineral Sector Governance Act, 2016. Similarly, section 83 provides offences, punishment and its cognizance.

This section being relevant to the present controversy, it is, therefore, reproduced as below:

"83. Offences, punishments and cognizance.--

(1) The offences specified in Schedule-V and Schedule-VI shall be liable to punishment by way of imprisonment, fine, seizure, forfeiture, confiscation, impounding and such other penalties as are provided in this Act.

(2) Whoever commits any of the offences specified in-

(a) Part-I of the Schedule-V shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one million rupees, or with both and, where an accused was directed by the Licensing Authority or an officer authorized by it for immediate discontinuance of the offence, the court may impose a further fine which may extend to one thousand rupees for every day for the period the accused has persisted in the offence from the date of its commission;

(b) Part-II of Schedule-V shall be punishable with imprisonment which may extend to six months or fine which may extend to one hundred thousand rupees, or with both and, where an accused was directed by the Licensing Authority or an officer authorized by it for immediate discontinuance of the offence, the court may impose a further fine which may extend to five hundred rupees for every day for the period the accused has persisted in the offence from the date of its commission; and

(c) Schedule-VI shall in the first instance, be liable to fine by issuing a Challan specified in the Schedule-VII and, where an accused repeats the offence within a period of two months for which he was fined, he shall be liable to the same punishment as provided in clause (b).

(3) The offences specified in clause (a) of sub-section (2) shall be cognizable and non-bailable and information in this regard shall be reported to the respective police station, by the Licensing Authority or an officer authorized by it in this behalf, for registration of a case against the accused.

(4) A court shall take cognizance of the offences specified in clause (b) of sub-section (2) on a complaint made in writing by Licensing Authority or an officer authorized by it in this behalf.

(5) The offences specified in Part II of the Schedule-V and Schedule-VI shall be tried in a summary manner in accordance with the provisions of section 260 to 265 (both inclusive) of the Code of Criminal Procedure, 1898 (V of 1898), but the limit of punishment mentioned in sub-section (2) of section 262 thereof shall not be applicable.

(6) Unless any specific provision is provided in this Act, the provision of Criminal Procedure

Code, 1898 (V of 1898) shall apply to all the proceedings under this Act.”

5. In the instant case, the FIR registered against the accused/petitioners has been questioned on the ground that it was not reported by the Licensing Authority or an officer authorized by it in his behalf, as such, we endeavor to further elaborate this matter. Section 154 of the Criminal Procedure Code, 1898 deal with registration of FIR, it is reproduced for convenience of reference:

“154. **Information in cognizable cases.** Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant ; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the 1[Provincial Government] may prescribe in this behalf

Provided that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, than such information shall be recorded by an investigating officer in presence of a female police officer or a female family member or any other person with consent of the complainant, as the case may be

Provided further that if the information, given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, is distressed such information shall be recorded by an investigating officer at residence of the complainant or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant, as the case may be.”

F.I.R. under section 154 Cr.P.C can be registered by an informant about any occurrence and necessarily he may not be an aggrieved person while section 83

of the Khyber Pakhtunkhwa Mineral Sector Governance Act, 2016 provides that the offence relating to violation of its provisions shall be reported to the respective police station by the Licensing Authority or an officer authorized by it in this behalf. In this case, the Mineral Guard of the relevant office of the respondent-department has reported for registration of F.I.R., allegedly complaining about violation of sections 54 and 83 of the Khyber Pakhtunkhwa Minerals Sector Governance Act, 2016, in violation of section 83 of Khyber Pakhtunkhwa Minerals Sector Governance Act, 2016.

6. Two principles of law are applicable to the case in hand, one is that where law required an act to be done in a particular manner, it has to be done in that manner alone and such dictate of law could not be termed as technicality. Reference can be made to the case of '*Muhammad Anwar and others Vs. Mst. Ilyas Begum and others*' (PLD 2013 SC 255) and the other principle that is the foremost is that where there is conflict of procedural law on the same subject, special law has to be applied. Reference can be made to the case of '*Tanveer Hussain Vs. Divisional Superintendent, Pakistan Railways and two others*' (PLD 2006 SC

249), PLD 2019 Islamabad 1, 2019 P.Cr.L.J 504,
PLD 2019 SINDH 209 and PLD 2019 Lahore 429.

7. The Khyber Pakhtunkhwa Mineral Sector Governance Act, 2016 being a special law wherein section 83 authorizes only the Licensing Authority or the person authorized by it in his behalf to report violation of the provisions of the Act *ibid*, however from the record we have not found any authorization from the Licensing Authority, thus, the registration of F.I.R by an unauthorized person in the instant case cannot be considered as a legal F.I.R. The august Supreme Court of Pakistan in case of '*Syed Mushahid Shah and others Vs. Federal Investment Agency and others*' (2017 SCMR 1218) held that where there is conflict between a special law and general law, the former will prevail over the latter, as such, it is held that section 154 Cr.P.C shall be read with section 83 of the Khyber Pakhtunkhwa Mineral Governance Act, 2016 and the word *informant* mentioned in section 154 Cr.P.C shall be considered as substituted with the word '*Licensing Authority or the person authorized by it in this behalf*' for the purpose of registration of F.I.R.

8. For the reasons stated above, this and the connected writ petitions are allowed. The F.I.Rs

impugned having been registered in violation of law are struck down. However, the respondents shall be at liberty to proceed afresh against the petitioners in accordance with law, if they are so advised.

Announced.
Dt.22.10.2019.

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M.Saleem/ (DB)Mr. Justice Ijaz Anwar and Mr. Justice Shakeel Ahmad*