State Of Nct Of Delhi vs Sanjay on 4 September, 2014

Equivalent citations: AIR 2015 SUPREME COURT 75, 2014 (9) SCC 772, 2014 AIR SCW 5487, AIR 2014 SC (CRIMINAL) 2097, 2014 (6) ADR 598, 2014 (3) ABR (CRI) 698, (2015) 2 RAJ LW 1456, (2014) 10 SCALE 166, (2014) 4 JLJR 136, (2014) 4 KER LJ 184, (2015) 1 JCR 126 (SC), (2015) 1 GUJ LR 778, (2014) 3 KER LT 1033, (2014) 59 OCR 522, (2014) 4 PAT LJR 278, (2014) 4 RECCRIR 211, (2014) 3 CURCRIR 675, (2014) 3 UC 1937, (2014) 143 ALLINDCAS 200 (SC)

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Bench: Pinaki Chandra Ghose, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 499 OF 2011

STATE OF NCT OF DELHI … Appellant(s)

Versus

SANJAY … Respondent(s)

with

CRIMINAL APPEAL NO. 2105 OF 2013

JAYSUKH BAVANJI SHINGALIA … Appellant(s)

Versus

STATE OF GUJARAT AND ANOTHER … Respondent(s)

CRIMINAL APPEAL NOS. 2108-2112 of 2013

MALABHAI SHALABHAI RABARI AND OTHERS … Appellant(s)

Versus

STATE OF GUJARAT AND OTHERS … Respondent(s)

CRIMINAL APPEAL NO.2107 of 2013

KALUBHAI DULABHAI KHACHAR … Appellant(s)

Versus

STATE OF GUJARAT AND ANOTHER … Respondent(s)

CRIMINAL APPEAL NO.2106 of 2013

SONDABHAI HANUBHAI BHARWAD … Appellant(s)

Versus

STATE OF GUJARAT AND ANOTHER … Respondent(s)

JUDGMENT

M.Y.EQBAL, J.

1. The principal question which arises for consideration in these appeals is whether the provisions contained in Sections 21, 22 and other sections of Mines and Minerals (Development and Regulation) Act, 1957 operate as bar against prosecution of a person who has been charged with allegation which constitutes offences under Section 379/114 and other provisions of the Indian Penal Code. In other words, whether the provisions of Mines and Minerals Act explicitly or impliedly excludes the provisions of Indian Penal Code when the act of an accused is an offence both under the Indian Penal Code (in short, 'IPC') and under the provisions of Mines and Minerals (Development and Regulation) Act.

2. Criminal Appeal No.499 of 2011 arose out of an order passed by the Delhi High Court on an application under Section 482 Cr.P.C. seeking quashing of the FIR registered at Police Station Alipur under Sections 379/114/120B/34 IPC on the allegation that appellant was involved in illegal mining of sand from the Yamuna basin. An FIR was registered by the police suo motu having come to know that some persons were removing and selling sand from the Yamuna basin for the last so many days. On receipt of such information, the police officers committed raid and visited the site where they found one dumper filled with sand. Because of non- production of any documents and valid papers, the digging equipments were seized and taken into possession and persons were arrested. An FIR was registered on the charges of illegal mining under Section 379/114 IPC besides being cognizable offence under Section 21 (4) of the Mines and Mineral (Development and Regulation) Act, 1957 (in short the MMDR Act).

3. The appellant challenged the registration of the case on the ground inter alia that offence if at all committed, cognizance would have been taken under the provisions of MMDR Act, that too on the basis of complaint to be filed under Section 22 of the Act by an authorized officer.

4. Criminal Appeal No.2105 of 2013 Similarly this case arose out of an order passed by the Gujarat High Court on an application filed by the appellant seeking quashing of the FIR on various grounds inter alia that Section 22 of the MMDR Act put a complete bar on the registration of FIR by the police. The allegation inter alia in the FIR was on illegal mining in those areas where mining lease was already revoked.

5. Criminal Appeal Nos. 2108-2112 of 2013 In these cases, appellants are the owners of Murlidhar Stone Industries and were granted quarry lease in the seam of Village Thoriwari for excavation of mines and minerals on payment of royalty. The appellants challenged the legality and validity of mining complaint lodged by the State geologist against them for offences under Section 379/114 of IPC and under Section 21 of the MMDR Act. The appellants sought an appropriate writ or direction to quash and set aside the criminal proceedings on the same ground that Section 22 of the Act prohibits registration of FIR with respect to offences punishable under the said MMDR Act.

6. Criminal Appeal No.2107 of 2013 This appeal also arose out of the order passed by the High Court of Gujarat on the application challenging the legality and validity of criminal complaint filed before Bhuj Taluka Police Station for the alleged illegal mining and transporting a dumper loaded with black trap stone. A complaint was made with the police for the commission of offence under Section 379 read with Section 114 of the IPC and under Section 21 of the MMDR Act.

7. Criminal Appeal No.2106 of 2013 This appeal also arose out of a complaint filed before Sayla Police Station by the Incharge Mines Supervisor, alleging offence punishable under Sections 4(1) and 21(1) of the MMDR Act. No charge sheet has been filed in this complaint so far.

8. Criminal Appeal No.499 of 2011, as stated above, arose out of the order passed by the Delhi High Court. The Delhi High Court formulated three issues for consideration:-

> (1) Whether the police could have registered an FIR in the case;
>
> (2) Whether a cognizance can be taken by the concerned Magistrate on the basis of police report; and (3) Whether a case of theft was made out for permitting registration of an FIR under Section 379/411 of the Indian Penal Code.

The High Court after referring various provisions on the MMDR Act vis-à-vis Code of Criminal Procedure disposed of the application directing the respondent to amend the FIR, which was registered, by converting the offence mentioned therein under Section 379/411/120B/34 of IPC to Section 21 of the MMDR Act. The High Court in para 18 of the impugned order held as under:-

> "18. In view of the aforesaid and taking into consideration the provisions contained under Section 21 (6) of the said Act I hold that:
>
> (i) The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;

(ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorized officer, which may be filed along with the police report;

(iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer."

9. On the other hand the Gujarat High Court formulated the following question for consideration:-

Whether Section 22 of the Act would debar even lodging an FIR before the police with respect to the offences punishable under the said Act and Rules made thereunder?

In Case such FIR's are not debarred and the police are permitted to investigate, can the concerned Magistrate take cognizance of the offences on a police report?

What would be the effect on the offences punishable under the Indian Penal Code in view of the provisions contained in the Act?

10. The Gujarat High Court came to the following conclusion:-

(i) The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;

(ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorized officer, which may be filed along with the Police report;

(iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer.

The High Court, therefore, held that:-

1. Section 22 of the Act does not prohibit registering an FIR by the police on information being given with respect to offences punishable under the said Act or the Rules made thereunder.

> 2. It is however, not open for the Magistrate to take cognizance of the offence punishable under the Act or the Rules made there under on a mere charge- sheet filed by the police. It would, however, be open for the officer authorized by the state or the Central Government in this behalf to file a complaint in writing before the Magistrate relying upon the investigating carried out by the police and the complaint may also include the papers of the police investigation.
>
> 3. With respect to offences punishable under the Indian Penal Code, no such bar as indicated in para (2) would apply.

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22. In so far as the petitions where only FIRs have been registered by the police and no charge sheet is filed, they must fail. In so far as the cases where police investigation has been concluded and charge sheets have been filed, it would not be open for the Magistrate concerned to take cognizance of offences only on such police reports.

11. In the case of Sengol, Charles and K. Kannan, etc.etc. vs. State Rep. by Inspector of Police, 2012 Cri LJ 1705, 2012(2) CTC 369, a similar question also came for consideration before the Madras High Court where a batch of writ petitions were heard and disposed of. The allegation made against the writ petitioner in the FIR was that they committed theft of sand from rivers and river-bed belonging to the Government, which act also constitutes violation of the provisions of MMDR Act. Accordingly, they were prosecuted for the offence punishable under Section 21 of the MMDR Act and also under Section 379 IPC. The question that came for consideration before the Court was as to whether the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, will either explicitly or impliedly exclude the provisions of the Indian Penal Code when the act of an accused is an offence both under the Indian Penal Code and under the Provisions of the Mines and Minerals (Development and Regulation) Act, 1957?

12. After considering various provisions of the Act, the Division Bench observed:-

> "35. A cursory comparison of these two provisions with Section 378 of IPC would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. constitutes an offence punishable under Section 21 of the Mines and Minerals Act, whereas dishonestly taking any movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in Section 378 of IPC are totally different from the ingredients of an offence punishable under Section 21(1) r/w Section 4(1) and 4(1A) of the Mines and Minerals Act."

13. The Calcutta High Court in the case of Smt. Seema Sarkar vs. The State, (1995)1 CALLT 95(HC), has taken a different view. In this case the Block Land Reforms Officer lodged a complaint with the Police Station alleging inter alia that the accused persons unauthorisedly excavated the land of ordinary clay for manufacturing brick without an authorized licence and thereby violated Section

21(2) of the MMDR Act and Section 379 IPC. The Bhatar police station registered the complaint treating it as an FIR and GR case was started before the sub-divisional judicial Magistrate, Faridabad. The order taking cognizance and also the complaint was challenged by the accused persons on the ground inter alia that no court is competent and empowered to take cognizance of an offence under the MMDR Act, 1957 unless the complaint is being lodged by an authorized person. Quashing the complaint, the Calcutta High Court held as under:-

> "6. The learned Magistrate has taken cognizance of. the offence on the basis of the charge-sheet as submitted by the Police under Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 and Section 379 of the Indian Penal Code. Cognizance can be taken under section 190 of the Code of Criminal Procedure, 1973. Cognizance is one and it cannot be divided. Splitting of cognizance is not permissible under the law. This is the admitted position that the complainant who lodged the complaint is not an authorized person to make such complaint. So taking cognizance on the basis of the complaint by the learned Magistrate for violation of the provision under Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 is bad. The only question that is left open is whether taking cognizance itself is bad or a partial cognizance can be taken? In the peculiarity of the facts and circumstances of the case if the offence as alleged under Section 379 I.P.C. against the accused is dissociated from the allegation of excavation of earth without license constituting an offence under Section 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957, then there is no ingredient for an offence under Section 379 I.P.C. against the accused. Even if it is assumed that there is such an ingredient then the order of taking cognizance is bad because cognizance is one and it cannot be made a split. If it is found that taking cognizance of an offence is bad the other part of the offence for which cognizance has been taken cannot be sustained in law."

14. Since conflicting views have been taken by Gujarat High Court, Delhi High Court, Kerala High Court, Calcutta High Court, Madras High Court and Jharkhand High Court, and they are in different tones, it is necessary to settle the question involved in these appeals.

15. Mr. Nikhil Goel learned counsel appearing in Criminal Appeal Nos. 2105, 2106 and 2107 of 2013 assailed the impugned order of the High court on various grounds. Learned counsel firstly contended that Section 22 of MMDR Act per se puts a bar even on registration of the FIR and consequently on investigation unless a direction to that effect comes from the Magistrate and that too on a complaint in writing made by a person authorized in this behalf. Learned counsel contended that Section 21(6) of the Act makes the offence under sub-section 1 of Section 21 to be cognizable irrespective of anything contained to the contrary in the Code of Criminal Procedure. Learned counsel contended that both Section 21(6) and Section 22 if read independently on each other would make the other provision otiose. As a result, the bar under Section 22 of the Act would not only prevail upon the provisions contained in Section 190, Cr.P.C. but would prevail over the chapter of the investigation, namely Chapter 12 Cr.P.C.

16. Learned counsel further submitted that in case the cognizability of the offence contained in sub-clause 6 of Section 21 is to be extended to include applicability of Chapter 12 of the Criminal Procedure Code, without complying with the provisions of Section 22, the same would present at least three difficulties. Firstly, there are several provisions after the stage of filing of charge-sheet which would be contrary to the provisions and the rules contained in the 1957 Act. These provisions in the act and the rules framed under the 1957 legislation inescapably indicate that almost everything relating to an offence under the provisions of Section 21 has to be done by the authorized officer. Accordingly, if the provisions of Section 21(6) are to be extended to Chapter 12, while the police may register an FIR, the power to seize, the power to compound, the requirement of taking directions from the jurisdictional magistrate are examples of some things which the police cannot do in view of direct contrary to the provisions in the 1957 Act. Learned counsel submitted that this power of the police is equivalent to the same power/duty which arises pursuant to an order of the Magistrate under Section 156 [3]. There would definitely be cases where offences punishable under Section 20 were brought to the notice of persons who were neither authorized person under the Act nor the police. Therefore in such a situation, if the police fails to act, the other option available to any person is to make an application under Section 156 [3]. However, in this case, the learned Magistrate has no jurisdiction to pass an order under this provision in view of paragraph 11. Therefore, it will be a completely incongruous situation if the provisions of sub-clause 6 of Section 21 are to be extended to Chapter 12 despite which several provisions in Chapter 12 cannot be invoked.

17. Learned counsel further submitted that the provisions of Chapter 12 to 14 leading up to the magistrate taking cognizance of an offence are a part of a common statutory duty. The investigation under Section 156 of the Code has to necessarily result in a report either under Section 170 or 173 of the Code. The appellant submits that the magistrate is duty bound to act on such report in one of the three manners suggested in para-6 of 1980 (4) SCC 631. It is submitted that there is no other option of preparation of final report and keep it in abeyance. For this reason as well, the provisions of sub-section (6) cannot be read into Chapter 12 of the code. Learned counsel further submitted that the manner in which the various high courts have dealt with these provisions are conflicting. The appellant relies upon the decision of Kerala High Court reported in 2008 Cr.L.J. 2388, decision of Madras High Court in Sengol (supra), the judgments of this Court reported in (2009) 7 SCC 526 and (2011) 1 SCC 534 on the interpretation of similar clauses under different enactments. It was contended that if the intention of the Legislature was to make violation of the provisions of Section 4 of the MMDR Act as an offence of theft, there would have been an appropriate provision in the MMDR Act itself. The counsel submits that there is a specific purpose for which powers have been given to the authorized person to take care of breaches under the Act and as such breaches are to be tried under the general penal law as it would take away the protection which an accused/suspect has been given under the MMDR Act. The appellant submits that all penal statutes have to be construed strictly and wherever there are two views possible, benefit to an accused has to be given.

18. Before answering the question, we shall first refer in brief the relevant provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Code of Criminal Procedure. Section 4 of the Act puts a restriction on mining operation or prospecting mining operation by any person except under a lease or licence. Section 4 reads as under:-

"4. Prospecting or mining operations to be under licence or lease. (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement. Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956. Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease."

19. From a bare perusal of Section 4, particularly Section 4(1A) would show that there is a total restriction on transportation or search of minerals otherwise than in accordance with the provisions of the Act and the rules made thereunder. The next relevant provisions are Sections 21 and 22 of the Act. Section 21 reads as under :-

"Penalties 21. (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty- five thousand rupees, or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub-section (1) shall be cognizable."

20. Section 21 is a penalty provision in case of contravention of Section 4(1A) of the Act and is punishable with imprisonment for a term which may extend to two years. Sub-section 3 of Section 21 would show that the State Government or any other authority authorized by the State Government may obtain the help of police to evict the trespassers from the land who is doing mining activity in contravention of the provisions of the Act. Sub- section 4 further empowered the officer or an authority specially empowered in this behalf to seize any tool, equipment, vehicle or any other thing which are used by any person who illegally or without any lawful authority erases, transports any minerals from any land. Those minerals, tools, equipment or vehicle or any other thing so seized shall be confiscated by the order of the court competent to take cognizance and shall be disposed of in accordance with the direction of such court as contemplated under sub- section 4(A) of Section 4 of the Act. Sub-section (6) of Section 21 has been inserted by an Amendment Act of 1986 whereby an

offence under Sub- section (1) of this Section has been made cognizable. Section 22 which is very relevant for the instant case needs to be quoted hereinbelow :-

> "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."

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

22. Section 23(B) confers power to any gazetted officer of the Central or State Government authorized on that behalf to make search of minerals, documents or things in case there is a reason to believe that any mineral has been raised in contravention of the Act or the Rules made thereunder. While making search provisions of Section 100 of Code of Criminal Procedure has been made applicable to every search.

"23B. Power to search --. If any gazetted officer of the Central or a State Government authorised by the Central Government [or a State Government, as the case may be, in this behalf by general or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or rules made thereunder or any document or thing in relation to such mineral is secreted in any place [or vehicle,] he may search for such mineral, document or thing and the provisions of section 100 of the Code of Criminal Procedure, 1973 shall apply to every such search."

23. In exercise of powers conferred by Section 23(C)(1) of the MMDR Act, the Government of Gujarat made rules called Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005. The said Rules, inter alia, made provisions to search, seizure and confiscation of the property in the manner provided under the Act as and when a person violates the provisions of the Act and the Rules made thereunder in doing mining activities.

24. Looking into the provisions the Code of Criminal Procedure, 1973 the relevant provisions need to be referred hereunder. Section 2(c), 2(d) and 2(h) define cognizable offence, complaint and investigation which reads as under :-

> "2(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;
>
> 2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;"

25. Section 4 provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the said Code. Sub-section (2) of Section 4 provides that all offences under any other law shall be inquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment regulating the mining or place of investigation, inquiry or trial of such offences. Coming to the provisions of Section 41 of the Code, it will show that a police officer without an order of Magistrate and warrant can arrest any person who commits a cognizable offence. The Court may also arrest any person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exist that he has committed a cognizable offence punishable with imprisonment for a term which made less than seven years. The relevant part of Section 41, Cr.P.C. is quoted hereinbelow:-

"41. When police may arrest without warrant .-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

....."

26. Chapter 11 of the Code confers very important power and duty upon the police officer to take preventive action in certain cases. Sections 149, 150, 151 and 152 of the Code are worth to be referred to and quoted hereinbelow :-

"149. Police to prevent cognizable offences – Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Information of design to commit cognizable offences – Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent the commission of cognizable offences – (1) A police officer, knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or any other law for the time being in force.

152. Prevention of injury to public property.- A police office may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation."

27. Perusal of aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law.

28. The policy and object of 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.

29. 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.

30. The mining of aggregates in rivers has led to severe damage to river, 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 the Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 centimetres 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.

31. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

32. The report also dealt with the astonishing impact of sand mining on the economy. It states that the 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.

33. 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.

34. 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.

35. In the case of M. Palanisamy vs. The State of Tamil Nadu, 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 Mine 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:

> "20. 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 river beds 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 river beds may also cause the entire stream-bed to degrade to the depth of excavation.
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> 22. 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, particles sizes, stream flows, and channel morphology.
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> 23. 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."

36. In the case of Centre for Public Interest Litigation vs. 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:-

> "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."[pic]

37. In the case of M.C. Mehta vs. Kamal Nath and others (1997) 1 SCC 388, this Court while considering the doctrine of public trust which extend to natural resources observed as under:-

> "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 nullious) or by every one 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 :
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> 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, need not be repeated in detail here. But two points should be emphasized. 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."
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> 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:
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> [pic]"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." xxxxxxxxx
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> 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 sea-shore, running waters, airs, 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."

38. In the case of Intellectuals Forum vs. 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:-

> "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). 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:
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> "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."

39. In the case of Manohar Lal Sharma vs. Principal Secretary, (2014) 2 SCC 532, this Court while considering the power of the police officer observed as under:-

> "24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power [pic]and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens."

40. In the case of State of M.P. vs. Ram Singh, (2000) 5 SCC 88, this Court was considering an order by which the High Court quashed the investigation and consequent proceedings conducted and concluded by the police under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 on the ground that the investigation had not been conducted by an authorized officer in terms of Section 17 of the Act. The Court held that the Act was intended to make effective provision for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servant and is designed to be liberally construed so as to advance its object. The Court observed:-

> "9. The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and

extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act.

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14. It may be noticed at this stage that a three-Judge Bench of this Court in H.N. Rishbud v. State of Delhi, AIR 1955 SC 196, had held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Referring to the provisions of Sections 190, 193, 195 to 199 and 537 of the Code of Criminal Procedure (1898) in the context of an offence under the Prevention of Corruption Act, 1947, the Court held:

"A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 Cr.PC as the material on which cognizance is [pic]taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 Cr.PC is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 to 199.

These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and

(c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 Cr.PC which is in the following terms is attracted:

> 'Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice.' If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled as appears from the cases in — 'Parbhu v. Emperor, AIR 1944 PC 73, and — 'Lumbhardar Zutshi v. R., AIR 1950 PC 26 " It further held:
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> "In our opinion, therefore, when such a breach is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5- A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."[pic]

41. In the case of Directorate of Enforcement vs. Deepak Mahajan, (1994) 3 SCC 440, the question came up for consideration before this Court was as to whether a Magistrate before whom a person arrested under Section 35 of the Foreign Exchange Regulation Act, 1973 is produced, has jurisdiction to authorize detention of that person under Section 167(2) of the Code of Criminal Procedure. Answering that question the Court observed:-

> "23. Keeping in view the cardinal principle of law that every law is designed to further the ends of justice but not to frustrate on the mere technicalities, we shall deal with all those challenges in the background of the principles of statutory interpretations and of the purpose and the spirit of the concerned Acts as gathered from their intendment.
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> 24. The concerned relevant provisions of the Acts with which we are concerned, no doubt, pose some difficulty in resolving the question with regard to the jurisdiction of the Magistrate authorising detention and subsequent extension of the same when the provisions of those Acts are narrowly and literally interpreted. Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.

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134. There are a series of decisions of various High Courts, of course with some exception, taking the view that a Magistrate before whom a person arrested by the competent authority under the FERA or Customs Act is produced, can authorise detention in exercise of his powers under Section

167. Otherwise the mandatory direction under the provision of Section 35(2) of FERA or Section 104(2) of the Customs Act, to take every person arrested before the Magistrate without unnecessary delay when the arrestee was not released on bail under sub-section (3) of those special Acts, will become purposeless and meaningless and to say that the courts even in the event of refusal of bail have no choice but to set the person arrested at liberty by folding their hands as a helpless spectator in the face of what is termed as "legislative casus omissus" or legal flaw or lacuna, it will become utterly illogical and absurd."

42. In the case of Maqbool Hussain vs. State of Bombay, AIR 1953 SC 325, the question that fell for consideration before the Constitution Bench of this Court was whether by reason of the proceedings taken by the Sea Customs authorities the appellant could be said to have been prosecuted and punished for the same offence with which he was charged in the court of the Chief Presidency Magistrate, Bombay. In the said case, gold had been brought by the appellant from Jeddah in contravention of the provisions of Foreign Exchange Regulation Act, 1947. He was also liable to be prosecuted under the Sea Customs Act. The prosecution was challenged as being violative of Article 20(2) of the Constitution. The Constitution Bench answering the question held as under:

"...There is no doubt that the act which constitutes an offence under the Sea Customs Act as also an offence under the Foreign Exchange Regulation Act was one and the same, viz., importing the gold in contravention of the notification of the Government of India dated the 25th August, 1948. The appellant could be proceeded against under section 167(8) of the Sea Customs Act as also under section 23 of the Foreign Exchange Regulation Act in respect of the said act. Proceedings were in fact taken under section 167(8) of the Sea Customs Act which resulted in the confiscation of the gold. Further proceedings were taken under section 23 of the Foreign Exchange Regulation Act by way of filing the complaint aforesaid in the Court of the Chief Presidency Magistrate, Bombay, and the plea which was taken by the accused in bar of the prosecution in the Court of the Chief Presidency Magistrate, was that he had already been prosecuted and punished for the same offence and by virtue of the provisions of article 20(2) of the Constitution he could not be prosecuted and punished again."

43. This Court further observed that:

> "The fundamental right which is guaranteed in article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy". The roots of that principle are to be found in the well established rule of the common law of England "that where a person has been convicted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence." (Per Charles J. in Reg. v. Miles 24, Q.B.D. 423. To the same effect is the ancient maxim "Nemo bis debet punire pro uno delicto", that is to say that no one ought to be twice punished for one offence or as it is sometimes written "pro eadem causa", that is, for the same cause."

> 44. In the case of State of Bombay vs. S.L. Apte, AIR 1961 SC 578, the question that fell for consideration was whether in view of an earlier conviction and sentence under Section 409, IPC, the subsequent prosecution for an offence under Section 105 of the Insurance Act was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution.

Answering the question, the Constitution Bench of this Court observed:

> "14. To operate as a bar the second prosecution and the consequential punishment thereunder must be for "the same offence". The crucial requirement, therefore for attracting the Article is that the offences are the same, i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out. It would be seen from a comparison of s. 105 of the Insurance Act and s. 405 of Indian Penal Code (s. 409 of the Indian Penal Code being only an aggravated form of the same offence) that though some of the necessary ingredients are common they differ in the following :

> (1) Whereas under s. 405 of the Indian Penal Code the accused must be "entrusted" with property or with "dominion over that property", under s. 105 of the Insurance Act the entrustment or dominion over property is unnecessary; it is sufficient if the manager, director, etc. "obtains possession" of the property.

> (2) The offence of criminal breach of trust (s. 405 of the Indian Penal Code) is not committed unless the act of misappropriation or conversion or "the disposition in violation of the law or contract", is done with a dishonest intention, but s. 105 of the Insurance Act postulates no intention and punishes as an offence the mere withholding of the property -

whatever be the intent with which the same is done, and the act of application of the property of an insurer to purposes other than those authorised by the Act is similarly without reference to any intent with which such application or misapplication is made. In these circumstances it does not seem possible to say that the offence of criminal breach of trust under the Indian Penal Code is the

"same offence" for which the respondents were prosecuted on the complaint of the company charging them with an offence under s. 105 of the Insurance Act.

15. This aspect of the matter based on the two offences being distinct in their ingredients, content and scope was not presented to the learned Judges of the High Court, possibly because the decisions of this Court construing and explaining the scope of Art. 20(2) were rendered later. In Om Prakash Gupta v. State of U.P. [1957] S.C.R. 423 the accused, a clerk of a municipality had been convicted of an offence under s. 409 of the Indian Penal Code for having misappropriated sums of money received by him in his capacity as a servant of the local authority and the conviction had been affirmed on appeal, by the Sessions Judge and in revision by the High Court. The plea raised by the accused before this Court, in which the matter was brought by an appeal with special leave, was that s. 409 of the Indian Penal Code had been repealed by implication by the enactment of sub- ss. (1)(c) and (2) of s. 5 of the Prevention of Corruption Act because the latter dealt with an offence of substantially the same type. This court repelled that contention. It analysed the ingredients of the two offences and after pointing out the difference in the crucial elements which constituted the offences under the two provisions, held that there was no repeal of s. 409 of the Indian Penal Code implied by the constitution of a new offence under the terms of the Prevention of Corruption Act. It was the application of this decision and the ratio underlying it in the context of Art. 20(2) of the Constitution that is of relevance to the present appeal. The occasion for this arose in State of Madhya Pradesh v. Veereshwar Rao Agnihotry [1957] S.C.R. 868 The respondent was a tax-collector under a municipality and was prosecuted for offences among others under s. 409 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act for misappropriation of sums entrusted to him as such tax-collector. By virtue of the provision contained in s. 7 of the Criminal Law Amendment Act, XLVI of 1952, the case was transferred to a Special Judge who was appointed by the State Government after the prosecution was commenced before a Magistrate. The Special Judge found the accused guilty of the offence under s. 409 of the Indian Penal Code and convicted him to three years' rigorous imprisonment but as regards the charge under s. 5(2) of the Prevention of Corruption Act, he acquitted the accused on the ground of certain procedural non-compliance with the rules as to investigation prescribed by the latter enactment. The respondent appealed to the High Court against this conviction and sentence under s. 409 of the Indian Penal Code and there urged that by reason of his acquittal in respect of the offence under s. 5(2) of the Prevention of Corruption Act, his conviction under s. 409 of the Indian Penal Code could not also be maintained, the same being barred by Art. 20(2) of the Constitution. The High Court of Madhya Bharat accepted this argument and allowed the appeal and the State challenged the correctness of this decision by an appeal to this Court. Allowing the appeal of the State, Govinda Menon, J., delivering the judgment of the Court observed :

> "This Court has recently held in Om Prakash Gupta v. The State of U.P. that the offence of criminal misconduct punishable under s. 5(2) of the Prevention of Corruption Act, II of 1947, is not identical in essence, import and content with an offence under s. 409 of the Indian Penal Code..... In view of the above pronouncement, the view taken by the learned Judge of the High Court that the two offences are one and the same, is wrong, and if that is so, there can be no objection to a trial and conviction under s. 409 of the Indian Penal Code, even if the respondent

> has been acquitted of an offence under s. 5(2) of the Prevention of Corruption Act II of 1947..... The High Court also relied on Art. 20 of the Constitution for the order of acquittal but that Article cannot apply because the respondent was not prosecuted after he had already been tried and acquitted for the same offence in an earlier trial and, therefore, the well-known maxim "Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa" (No man shall be twice punished, if it appears to the court that it is for one and the same cause) embodied in Art. 20 cannot apply."

45. In the case of T.S. Baliah vs. ITO, AIR 1969 SC 701, the question that arose for consideration before this Court was whether the appellant could be simultaneously prosecuted under Section 177, IPC and for violation of Section 52 of the Income Tax Act, 1922. Considering the provisions of Section 26 of the General Clauses Act, this Court held as under:

> "6. ....A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. We accordingly reject the argument of the appellant on this aspect, of the case.
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> 7. It was then contended on behalf of the appellant that the prosecution is illegal as complaint petition was required to be riled by the Inspecting Assistant Commissioner under the 1922 Act. In our opinion, there is no substance in this argument, Section 53 of the 1922 Act only requires that a person shall not be proceeded against for an offence under Section 51 or Section 52 of the 1922 Act "except at the instance of the Inspecting Assistant Commissioner". It is not disputed in the present case that the respondent has filed complaint petitions on the authority of the Inspecting Assistant Commissioner. There is no statutory requirement that the complaint petition itself must be filed by the Inspecting Assistant Commissioner. The clause "at his instance" in Section 53 of the 1922 Act only means "on his authority" and it is therefore sufficient compliance of the statutory requirement if the complaint petition is filed by the respondent on being authorised by the Inspecting Assistant Commissioner."

46. In the case of Collector of Customs vs. Vasantraj Bhagwanji Bhatia, 1988 (3) SCC 467, the question that arose for consideration before this Court was as to whether a person prosecuted under the Customs Act, 1962 was also liable to be prosecuted under the Gold (Control) Act, 1968. In that case, person was acquitted from the charge of commission of offence under the Customs Act. Considering the question, whether acquittal of that person will create a bar for subsequent prosecution under the Gold (Control) Act, 1968, this Court observed:

> "It is therefore evident that the ingredients required to be established in respect of the offence under the Customs Act are altogether different from the ones required to

be established for an offence under the Gold (Control) Act. In respect of the former, the prosecution has to establish that there was a prohibition against the import into Indian sea waters of goods which were found to be in the possession of the offender. On the other hand in respect of the offence under the Gold (Control) Act, it is required to be established that the offender was in possession of primary gold meaning thereby gold of a purity of not less than 9 carats in any unfinished or semi-finished form. In regard to the latter offence it is not necessary to establish that there is any prohibition against the import of gold into Indian sea waters. Mere possession of gold of purity not less than 9 carats in any unfinished or semi-finished form would be an offence under the Gold Control Act. It is therefore stating the obvious to say that the ingredients of the two offences are altogether different. Such being the case the question arises whether the acquittal for the offences under the Customs Act which requires the prosecution to establish altogether different ingredients operates as a bar to the prosecution of the same person in connection with the charge of having committed the offence under the Gold (Control) Act."

47. In the case of Leo Roy Frey vs. Thomas Dana, AIR 1958 SC 119, the question that arose for consideration before the Constitution Bench of this Court was as to whether conviction of a person for an offence under Section 157(8)(c) of the Customs Act will bar a subsequent trial for conspiracy, this Court observed that:

"The proceedings before the Customs authorities were under s. 167(8) of the Sea Customs Act. Under s. 186 of that Act, the award of any confiscation, penalty or increased rate of duty under that Act by an officer of Customs does not prevent the infliction of any punishment to which the person affected thereby is liable under any other law. The offences with which the petitioners are now charged include an offence under s. 120B, Indian Penal Code. Criminal conspiracy is an offence created and made punishable by the Indian Penal Code. It is not an offence under the Sea Customs Act. The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore quite separate offences. This is also the view expressed by the United States Supreme Court in United States v. Rabinowich (1915) 238 U.S. 78. The offence of criminal conspiracy was not the subject matter of the proceedings before the Collector of Customs and therefore it cannot be said that the petitioners have already been prosecuted and punished for the "same offence". It is true that the Collector of Customs has used the words "punishment" and "conspiracy", but those words were used in order to bring out that each of the two petitioners was guilty of the offence under s. 167(8) of the Sea Customs Act. The petitioners were not and could never be charged with criminal conspiracy before the Collector of Customs and therefore Art. 20(2) cannot be invoked. In this view of the matter it is not necessary for us, on the present occasion, to refer to the case of Maqbool Hussain v. The State of Bombay1953 SCR730 (AIR

> 1953 SC 325) and to discuss whether the words used in Art. 20 do or do not contemplate only proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal so ordinarily understood. In our opinion, Art. 20 has no application to the facts of the present case. No other points having been urged before us, these applications must be dismissed."

48. Similar provision had been made in the Wild Life (Protection) Act, 1972. Section 55 of the said Act is peri metria of Section 21 of the MMDR Act. Section 55 of the Wild Life (Protection) Act, reads as under:

> "55. No court shall take congnizance of any offence against this Act except on the complaint of the Chief Wild Life Warden or such other officer as the State Government may authorize in this behalf."

49. In the case of State of Bihar vs. Murad Ali Khan and others, (1988) 4 SCC 655, accusation was made against the persons by alleging that they shot and killed an elephant and removed ivory tusks of the elephant. On the basis of the complaint lodged with the Judicial Magistrate, cognizance of the offence was taken and process was issued. It was at the same time that the Police registered a case under Sections 447, 429 and 379, IPC read with Sections 54 and 39 of the Wild Life (Protection) Act, 1972 and the matter was investigated by the Police. At this stage, one of the accused persons moved the High Court under Section 482, Cr.P.C. to quash the order of the Magistrate to take cognizance of the alleged offence. The High Court took the view that Section 210, Cr.P.C. is attracted and that as an investigation by the Police was under progress in relation to the same offence, the learned Magistrate would be required to stay the proceedings on the complaint. The High Court further held that learned Magistrate acted without jurisdiction in taking cognizance of the offence. The matter ultimately came to this Court at the instance of State of Bihar. Holding that Section 210 was not attracted, Their Lordships held:

> "24. We are unable to accept the contention of Shri R.F. Nariman that the specific allegation in the present case concerns the specific act of killing of an elephant, and that such an offence, at all events, falls within the overlapping areas between of Section 429 IPC on the one hand and Section 9(1) read with Section 50(1) of the Act on the other and therefore constitutes the same offence. Apart from the fact that this argument does not serve to support the order of the High Court in the present case, this argument is, even on its theoretical possibilities, more attractive than sound. The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Act, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also.
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> 26. Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against

re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:

"The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offences for double jeopardy purposes only if 'each provision requires proof of an additional fact which the other does not' (Blockburger v. United States). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately.(Jeffers v.United States,[1977]432 US 137)"

27. The expression "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in Double Jeopardy (Oxford 1969) says at p. 108:

"The trouble with this approach is that it is vague and hazy and conceals the thought processes of the court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious [pic]consequence is the fact that a decision in one case that two offences are 'substantially the same' may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible...."

28. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In Leo Roy Frey v. Superintendent, District Jail, the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said:

"The offence of conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences."

50. It is well known principle that the rule against double jeopardy is based on a maxim nemo debet bis vexari pro una et eadem causa, which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once. However, it is also settled that a subsequent trial or a prosecution and punishment has no bar if the ingredients of the two offences are distinct.

51. In the case of State of Rajasthan vs. Hat Singh, (2003) 2 SCC 152, a person was prosecuted for violation of prohibitory order issued by the Collector under Sections 5 and 6 of the Rajasthan Sati (Prevention) Ordinance, 1987. Against the said Ordinance, mass rally took place which led to the registration of FIRs against various persons for violation of prohibitory order under Sections 5 and 6 of the Act. Persons, who were arrested, moved a petition challenging the vires of the Ordinance and the Act. The High Court upholding the vires of the Ordinance/Act held that the provisions of Sections 5 and 6 overlapped each other and that a person could be found guilty only of the offence of contravening a prohibitory order under either Section 6(1) or Section 6(2) of the Act. This Court discussing the doctrine of double jeopardy and Section 26 of the General Clauses Act held as under:

> "We are, therefore, of the opinion that in a given case, same set of facts may give rise to an offence punishable under Section 5 and Section 6(3) both. There is nothing unconstitutional or illegal about it. So also an act which is alleged to be an offence under Section 6(3) of the Act and if for any reason prosecution under Section 6(3) does not end in conviction, if the ingredients of offence under Section 5 are made out, may still be liable to be punished under Section 5 of the Act. We, therefore, do not agree with the High Court to the extent to which it has been held that once a prohibitory order under sub-section (1) or (2) has been issued, then a criminal act done after the promulgation of the prohibitory order can be punished only under Section 6(3) and in spite of prosecution under Section 6(3) failing, on the same set of facts the person proceeded against cannot be held punishable under Section 5 of the Act although the ingredients of Section 5 are fully made out.

52. Learned counsel appearing for the appellant put heavy reliance on the decision of this Court in the case of Avtar Singh vs. State of Punjab, AIR 1965 SC 666, in which the appellant was prosecuted and convicted for theft of electrical energy under Section 39 of the Indian Electricity Act, 1910. The said conviction was challenged on the ground that as his prosecution was for an offence against the Act it was incompetent as it had not been instituted at the instance of any person mentioned in Section 50 of the Act. Section 39 of the Act provides that if a person dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code. It is not in dispute that the appellant had committed the theft mentioned in this section. However, Section 50 of the Act provides that no prosecution shall be instituted against any person for any offence against the Act except at the instance of the Government or an Electrical Inspector, or of a person aggrieved by the same. This Court allowing the appeal held as under:

> "We may now refer to certain general considerations also leading to the view which we have taken. First, we find that the heading which governs Sections 39 to 50 of the Act is "Criminal Offences and Procedure". Obviously, therefore, the legislature

> thought that s. 39 created an offence. We have also said that Sections 48 and 49 indicate that in the legislature's contemplation s. 39 provided for a punishment. That section must, therefore, also have been intended to create an offence to which the punishment was to attach. The word 'offence' is not defined in the Act. Since for the reasons earlier mentioned, in the legislature's view s. 39 created an offence, it has to be held that that was one of the offences to which s. 50 was intended to apply. Lastly, it seems to us that the object of s. 50 is to prevent prosecution for offences against the Act being instituted by anyone who chooses to do so because the offences can be proved by men possessing special qualifications. That is why it is left only to the authorities concerned with the offence and the persons aggrieved by it to initiate the prosecution. There is no dispute that s. 50 would apply to the offences mentioned in Sections40 to 47. Now it seems to us that if we are right in our view about the object of s. 50, in principle it would be impossible to make any distinction between s. 39 and any of the sections from s. 40 to 47. Thus s. 40 makes it an offence to maliciously cause energy to be wasted. If in respect of waste of energy s. 50 is to have application, there is no reason why it should not have been intended to apply to dishonest abstraction of energy made a theft by s. 39. For all these reasons we think that the present is a case of an offence against the Act and the prosecution in respect of that offence would be incompetent unless it was instituted at the instance of a person named in s. 50."

53. With due respect, the ratio decided by this Court can be severally distinguished for the reason that the complaint or allegation of dishonest abstraction of electricity as contemplated under Section 39 making the act as a theft within the meaning of the Indian Penal Code and be made and proved by person possessing special qualification. In other words, whether there is a dishonest abstraction of electrical energy, as mentioned in Section 39 of the Act, can be ascertained only by a person/Engineers having special qualification in that field.

54. Last but not least, in addition to these decisions, in the case of Institute of Chartered Accountants of India vs. Vimal Kumar Surana and another, (2011) 1 SCC 534, this Court has very elaborately dealt with similar provision under the Chartered Accountants Act, 1949 (in short, 'C.A. Act'). In that case, the respondent, who passed the Chartered Accountant examination but was not a member of the appellant's Institute of Chartered Accounts, allegedly represented before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act on the basis of power of attorney or as legal representative and submitted documents such as audit reports and certificates required to be issued by the Chartered Accountants by preparing forged seals and thereby impersonated himself as Chartered Accountant. He was accordingly prosecuted and charge was framed against him under Sections 419, 468, 471 and 472, IPC. The respondent challenged the order by filing revision under Section 397, Cr.P.C. The Additional Sessions Judge set aside the order of the Magistrate and remanded the case to the trial court with a direction to decide whether there are sufficient grounds for framing charges under Sections 419, 468, 471 and 473, IPC read with Sections 24 and 26 of the C.A. Act. After remand, the trial court passed an order holding that there was no basis for framing any charge against respondent under the IPC. The Magistrate further held that cognizance of offences under Sections 24 and 26 of the C.A. Act cannot be taken because no

complaint had been filed by or under the order of the Council before the Magistrate. The revision filed against the orders of the Magistrate was dismissed. The High Court referring Sections 2, 4, 5 and Section 195(1), Cr.P.C. held that in the absence of a complaint the Magistrate was not competent to frame charges against the respondent. The High Court further held that in view of the special mechanism contained in the C.A. Act for prosecution of a person violating Sections 24, 24A and 26 of the Act, he cannot be prosecuted under the IPC. The matter finally came to this Court. Allowing the appeal, this Court considered catena of decisions and held as under:

> "24. Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrongdoer by filing the first information report or complaint under the relevant provisions of CrPC."
> xxxxxxxxxxxx
>
> 42. The submission of Shri Gupta that the respondent cannot be prosecuted for the offences defined under IPC because no complaint had been filed against him by the court concerned or authority as per the requirement of Section 195(1)(b)(ii) CrPC sounds attractive but lacks merit. The prohibition contained in Section 195 CrPC against taking of cognizance by the court except on a complaint in writing made by the court concerned before which the document is produced or given in a proceeding is not attracted in the case like the present one because the officers of the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act, 1995 before whom the respondent is alleged to have acted on the basis of power of attorney or as legal representative or produced audit report do not fall within the ambit of the term "court" as defined in Section 195(3) CrPC. Such officer/authorities were neither discharging the functions of a civil, revenue or criminal court nor could they be treated as tribunal constituted by or under the Central or State Act, which is declared to be a court for the purpose of Section 195."

55. 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 wild life 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 wild life, 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, waters 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.

56. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting persons under the Indian Penal Code where the offences committed by persons are penal and cognizable offence.

57. Sub-section (1A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the rules made thereunder. In other words no person will do mining activity without a valid lease or license. Section 21 is a penal provision according to which if a person contravenes the provisions of Sub-section (1A) of Section 4 shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure 1973.

58. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any rule made thereunder except upon a complaint made by a person authorized in this behalf.

59. It is very important to note that Section 21 does not begin with a non-obstante clause. Instead of the words "notwithstanding anything contained in any law for the time being in force no court shall take cognizance.....", the Section begins with the words "no court shall take cognizance of any offence."

60. It is well known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

61. In Liverpool Borough vs. Turner Lord Campbell (1861), 30 L.J. Ch.379, C.J. at page 380 said :-

> "No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of courts to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

62. In Pratap Singh vs. Shri Krishna Gupta, AIR 1956 SC 140 at page 141, the Supreme Court while interpreting the mandatory and directory provisions of statute observed as under:-

> "We do not think that is right and we deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form.
>
> Some rules are vital and go to the root of the matter; they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which Judges must determine

> the matter and exercising a nice discrimination, sort out one class from the other along broad based, commonsense lines."

63. The question is whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

64. In Maxell on the Interpretation of Statutes 10th Edn. at page 381, it is stated thus :-

> "On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

65. In the case of State of U.P. vs. Babu Ram Upadhya, AIR 1961 SC 751, while interpreting a particular statute as mandatory or directory this Court observed :-

> "When a statute uses the word 'shall', 'prima facie', it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

66. 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.

67. 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. It also weakens river beds, 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 ground water levels.

68. 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.

69. 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 laible to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

70. 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.

71. 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.

72. 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 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.

.....J. [M.Y. Eqbal] .....J. [Pinaki Chandra Ghose] New Delhi September 04, 2014