Imran And 3 Others vs State Of U.P. And Another on 10 July, 2019

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Author: Sanjay Kumar Singh

Bench: Sanjay Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 70 A.F.R.

Judgment reserved on 06.05.2019

Judgment delivered on 10.07.2019

Case :- APPLICATION U/S 482 No. - 16700 of 2019

Applicant :- Imran And 3 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- S.M.Faraz I. Kazmi

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1. Heard Mr. S.M. Faraz I. Kazmi, learned counsel for the applicants, Mr. N.D. Rai, Mr. Ravindra Kumar Singh, Mr. Ravi Prakash Bhatt, learned Additional Government Advocates appearing on behalf of opposite party No. 1/State of U.P. and perused the record with the assistance of learned counsels for the parties.

Relief sought for :-

2. By means of this application under sections 482 of the Code of Criminal Procedure, the applicants have invoked the inherent jurisdiction of this Court for quashing of the charge sheet No. 357-A of 2017 dated 14.4.2018, cognizance order dated 24.12.2018 as well as entire proceedings of Criminal Case No. 1520 of 2018 (State vs. Sarvar @ Babar and others) arising out of Case Crime No. 461 of 2017, under Sections 147, 148, 149, 336, 353, 307, 379 IPC and Section 4/21 Mines and Mineral (Development and Regulation) Act, Police Station Behat, District Saharanpur pending in the court of Judicial Magistrate-III, court No. 20, Saharanpur mainly on the ground that Section 22 of the Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act) prohibits registration of FIR and cognizance on police report with regard to offence punishable under said Act 1957.

3. Since pure legal issues are involved in this case and the facts as emerges on record are not disputed ,therefore, with the consent of learned counsel for the parties, the instant case is being decided at the admission stage itself without calling counter affidavit.

Issues:-

4. The principal issues, which arise for consideration by this Court are as follows :-

> (i). Whether Section 22 of the Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter referred as MMDR Act) prohibits registration of FIR?
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> (ii). Whether a person can be prosecuted simultaneously for one set of offence under two or more different acts?
>
> (iii). Whether prosecution of accused for the offence under Mines and Minerals (Development and Regulation) Act, 1957 as well as under Indian Penal Code, on the basis of police report (charge-sheet) is barred by Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 ?
>
> (iv). Whether in absence of filing of complaint, the Magistrate can take cognizance on police report (charge-sheet) submitted for the offence under Mines and Minerals (Development and Regulation) Act, 1957 as well as under Indian Penal Code ?

Basic Facts:-

5. Filtering out unnecessary details, the brief facts as per prosecution case, as emerges on record are that the opposite party No. 2 (Mahendrapal, Station Officer, Police Station Behat, District-Saharanpur) lodged first information report on 4.10.2017 registered as Case Crime No. 461 of 2017, under Sections 147, 148, 149, 336, 353, 307, 379 IPC and Section 4/21 Mines and Mineral (Development and Regulation) Act, at Police Station Behat, District-Saharanpur against five named accused persons, namely, Sarvar, Sonu, Banta, Anil, Jagdish and sixty to seventy unknown persons alleging inter-alia that on 04.10.2007 he along with constable Dipendra Singh and driver Jhalak Singh were on patrolling duty. When they reached towards bank of Yamuna river, they saw that

some people were doing illegal mining of sand by J.C.B. machine and some tractor trolley, dumper, etc loaded with minerals were also standing at the spot. In the meantime Khadak Singh, Platoon Commander of P.A.C. alongwith his team also reached at the spot. On giving warning people present there with common aim and object started pelting stones and also opened fire by country made pistol at the police personnel. Any how police personnel saved their life . On firing by the police personnel in their self defence, they escaped towards Haryana along with their J.C.B. Tractor trolly and dumper. The Investigating Officer after investigation submitted two charge sheets in this case. First charge sheet No. 357 of 2017 was filed on 12.12.2017 against seven accused persons namely Nawab, Gurmeet, Sompal, Viswas, Kuldeep, Akhlakh and Israr and second impunged charge-sheet no. 357A dated 14.4.2018 was submitted against twenty two accused persons including the four applicants under Sections 147, 148, 149, 336, 353, 307, 379 IPC and Section 4/21 Mines and Mineral (Development and Regulation) Act, on which the Judicial Magistrate III, Saharanpur has taken cognizance of the offence on 24.12.2018 and the same was registered as Case No- 1520/2018.

Submissions on behalf of the applicants:-

6. Learned counsel for the applicants assailing the impugned charge sheet dated 14.4.2018 and cognizance order dated 24.12.2018 submitted that :-

> 6.1 Mines and Minerals (Development and Regulation) Act, 1957 is a Special Act, therefore procedure provided under the Special Act shall prevail over the general procedure provided under code of criminal procedure.
>
> 6.2 Section 22 of the aforesaid Act of 1957 provides that 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, therefore, neither first information report could be lodged under Section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957 along with offences under I.P.C. nor applicants can be prosecuted on the basis of impugned charge sheet dated 14.04.2018.
>
> 6.3 The Judicial Magistrate concerned has committed legal error in taking cognizance on 24.12.2018 on the impugned charge sheet for the offence under Sections 147, 148, 149, 336, 353, 307, 379 IPC and Section 4/21 Mines and Mineral (Development and Regulation) Act.
>
> 6.4 Applicants cannot be prosecuted and punished for one offence under two different Acts (I.P.C. as well as M.M.D.R. Act) 6.5 The prosecution of the applicants is barred by the principle of "double Jeopardy".
>
> 6.6 Apart from the aforesaid legal submissions, it is also submitted that the present case is a case of no injury. Applicants have no criminal antecedents and they have falsely implicated in this case for no fault of theirs, as nothing has been recovered from the possession of the applicants, which shows that they were not indulged in an

illegal mining.

6.7 The last plank of the submissions of learned counsel for the applicants is that no prima facie offence against the applicants is made out under the aforesaid sections of Indian Penal Code as well as Mines and Minerals (Development and Regulation) Act, 1957, and in view of Section 22 of the aforesaid Act 1957, the impugned charge sheet as well as order taking cognizance for the offence under M.M.D.R. Act and I.P.C. are liable to be quashed by this Court.

Submissions on behalf of the State of Uttar Pradesh

7. Per contra, learned Additional Government Advocates refuting the aforesaid submissions advanced on behalf of the applicants vehemently supporting the prosecution case by submitting that :-

7.1 Prima facie cognizable offence under Sections 147, 148, 149, 336, 353, 307, 379 IPC and Section 4/21 Mines and Mineral (Development and Regulation) Act is made out against the applicants.

7.2 There is no specific bar that first information report cannot be lodged for the offence under the Mines and Minerals (Development and Regulation) Act 1957 along with other Acts, if cognizable offence is made out.

7.3 In this case, the first information report dated 12.10.2017 has been lodged for distinct offences under the Indian Penal Code as well as Mines and Minerals (Development and Regulation) Act, 1957.

7.4 The Magistrate concerned has not committed any illegality in taking cognizance on the charge sheet dated 14.4.2018.

7.5 The relief as claimed by the applicants cannot be granted under the law and the present application is liable to be dismissed.

Analysis of the relevant provisions:-

8. After having heard learned counsels for the parties at length, the Court feels that before delving into the issue, it would be apposite to mention here the relevant provisions relating to Mines and Minerals (Development and Regulation) Act, 1957, which reads as under :-

8.1 Section 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 of, 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 clause (45) of section 2 of the company act 2013, (18 of 2013) and any such entity that may be notified for this purpose by the central government.

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.

8.2 Section 21 Penalties.

(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to five lakh rupees per hectare of the area.

(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 two years or with fine which may extend to five lakh rupees, or with both,

and in the case of a continuing contravention, with an additional fine which may extend to fifty thousand 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, (2of 1974) an offence under sub-section (1) shall be cognizable.

8.3 Section 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.

8.4 Section 23 B. 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 (2 of 1974) shall apply to every such search.

9. On going through the aforesaid provisions of The Mines and Minerals (Development and Regulation) Act, 1957 Act , the following things are crystal clear :-

9.1. From a bare perusal of Section 4, particularly Section 4(1A) would show that there is a total restriction on transportation or storage or search of minerals otherwise than in accordance with the provisions of the Act and the rules made thereunder. In other words section 4 of the Act puts a restriction on mining operation or prospecting mining operation by any person except under a lease or licence.

9.2. Section 21 is a penalty provision in case of contravention of sub-section (1) or sub section (1A) of Section 4 of the Act and is punishable with imprisonment for a term which may extend to five years or with fine.

9.3 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 are doing mining activity in contravention of the provisions of the Act.

9.4 Sub-Section 4 of section 21 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.

9.5 Sub -Section 4A of section 21 provides also provides that 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.

9.6 Sub-section (6) of Section 21 has been inserted by an Amendment Act of 1986, whereby an offence Under Sub-section (1) of Section 21 has been made cognizable.

9.7. Cognizance of any offence punishable under The Mines and Minerals (Development and Regulation) Act, 1957 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.

9.8 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 doing search provisions of Section 100 of Code of Criminal Procedure have been made applicable to every search.

10. Now looking into the provisions the Code of Criminal Procedure, 1973 the relevant provisions are also needed to be referred hereunder.

10.1 Section 2(c), 2(d) and 2(h) of Cr.P.C. define cognizable offence, complaint and investigation, which reads as under:-

"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;

"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.

"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;

10.2 Section 4 : Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

10.3 Section 5 : Saving Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

10.4 Section 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.

1 [Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.] (ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing' or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in,

any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

1. Ins. By Act 41 of 2010, Sec. 2 (w.e.f. 1.11.2010) 10.5 Section 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.

10.6 Section 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.

10.7 Section 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 of any other law for the time being in force.

10.8 Section 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.

11. On going through the aforesaid provisions of The Code Criminal Procedure , the following things are crystal clear :-

> 11.1 Sub- Section (1) of 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.
>
> 11.2 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 manner or place of investigation, inquiry or trial of such offences.
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> 11.3 According to Section 5 of Cr.P.C., the procedure provided under the Special Act shall prevail over the general procedure provided under The Code of Criminal Procedure.
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> 11.4 According 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.
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> 11.5 Chapter XI (Section 149 to 153) of the Code confers very important power and duty upon the police officer to take preventive action in certain cases.

Discussion of decided cases:-

12. The controversy related to issue involved in this case also arose for consideration in other High Courts, therefore, it would be useful to refer the detail about some of the judgments.

13. The Delhi High Court in Criminal Appeal No. 499 of 2011 Sanjay vs State (2009) 109 DRT 594 while deciding the similar controversy formulated three issues for consideration:-

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

The Delhi High Court concluded that:-

(i) The offence under the Mines and Minerals (Development and Regulation) Act, 1957 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 Indian Penal Code does not arise because the said Act makes illegal mining an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer.

14. Before the Madras High Court in the case of Sengol, Charles and K. Kannan, etc. vs. State Rep. by Inspector of Police 2012 Cri. L.J. 1705 , a similar question also came for consideration. The fact in the said case was that the allegation against the accused in the FIR was that they committed theft of sand from rivers and riverbed 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 Indian Penal Code.

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?

The Madras High Court held that 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 Indian Penal Code 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.

15. When similar issue came up for consideration before the Calcutta High Court in the case of Smt. Seema Sarkar v. The State (1995) 1 CalLT 95. The High Court took a different view. In the said case the fact was that 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 Indian Penal Code. 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.

The Calcutta High Court held as under:-

> (i) 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.
>
> (ii) 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.
>
> (iii) 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 Indian Penal Code 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 Indian Penal Code 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.

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

> "Para 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: Effective Judicial

Intervention",Michigan Law Review, Vol. 68, Part1 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.

Para 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 :-

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.

Para 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 seashore, 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."

17. In the case of Intellectuals Forum Vs. State of A.P. (2006) 3 SCC 549, Apex Court while balancing the conservation of natural resources vis-à-vis urban development observed as under :

> "Para 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: 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."

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

> "Para 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 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."

19. 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 Apex 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."

20. The doctrine of double jeopardy has been gathered from the Article 20 (2) of the Constitution of india which provides that no person shall be prosecuted and punished for the same offence more than once. To attract applicability of Article 20(2) there must be a second prosecution and punishment for the same offence for which the accused has been prosecuted and punished previously. A subsequent trial or a prosecution and punishment are not barred if the ingredients of the two offences are distinct.

21. The rule against double jeopardy is stated in the maxim "nemo debet bis vexari pro una et eadem causa". It is a significant basic rule of Criminal Law that no man shall be put in jeopardy twice for one and the same offence. The rule provides foundation for the pleas of autrefois acquit and autrefois convict. The manifestation of this rule is to be found contained in Section 26 of the General Clauses Act, 1897, Section 300 of the Code of Criminal Procedure, 1973 and Section 71 of the Indian Penal Code, which reads as under :-

> "(i) Section 26 of the General Clauses Act provides:-
>
> Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence (emphasis supplied).
>
> (ii) Section 300 (1) of the CrPC provides:-
>
> A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221 or for which he might have been convicted under sub-section (2) thereof." (emphasis supplied)
>
> (iii) Section 71 of IPC provides:-

> Where anything which is an offence is made-up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.
>
> Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

22. After going through the aforesaid provisions , it is apparently clear that all the provisions emplay the expression "same offence". The leading authority of the Apex Court in which the rule against double jeopardy came to be dealt with and interpreted by reference to Article 20(2) of the Constitution is the Constitution Bench decision in case of Maqbul Hussain Vs. State of Bombay AIR 1953 SC 325 , wherein it has been held that the offences are distinct, there is no question of the rule as to double jeopardy being extended and applied.

23. In State of Bombay Vs. S.L. Apte & Another, AIR 1961 SC 578, the Constitution Bench of Apex Court held that the trial and conviction of the accused u/s 409 IPC did not bar the trial and conviction for an offence u/s 105 of Insurance Act because the two were distinct offences constituted or made up of different ingredients though the allegations in the two complaints made against the accused may be substantially the same.

24. In Om Prakash Gupta Vs. State of UP, AIR 1957 SC 458 as well as The State of Madhya Pradesh v. Veereshwar Rao AIR 1957 SC 592, it was held by the Apex Court that prosecution and conviction or acquittal u/s 409 of IPC do not debar the accused being tried on a charge u/s 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content.

25. In Roshan Lal & Ors. Vs. State of Punjab AIR 1965 SC 1413, the fact was that the accused had caused disappearance of the evidence of two offences u/s 330 and 348 IPC and, therefore, he was alleged to have committed two separate offences u/s 201 IPC. In the said case it was held by the Apex Court that neither Section 71 IPC nor Section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted for two sets of offences u/s 201 IPC though it would be appropriate not to pass two separate sentences."

26. Now, the question is whether the ingredients of Section 378 of IPC are similar to that of the ingredients of Section 21 of the Mines and Minerals Act. As I have already mentioned, Section 21(1) of the Mines and Minerals (Development and regulation) Act 1957 states that whoever contravenes the provisions of sub-sections (1) or (1A) of Section 4 shall be punished with imprisonment or with fine or with both. Sub Section (1) of Section 4 states that no person shall undertake any reconnaissance, prospecting or mining operation in anyarea, except under and in accordance with the terms and conditions of are connaissance permit or of a prospecting licenses or, as the case may

be, of a mining lease granted under this Act and the rules made hereunder. Sub Section (1A) of Section 4 states that "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 hereunder. 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 (Development and regulation) Act 1957, 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 (Development and regulation) Act 1957.

27. The Apex Court in case of The Institute of Chartered Accountants Vs. Vimal Kumar surana's 2011(1) SCC 534 has held tha there can well be a prosecution for an offence under Section 379 of IPC as well as under Section 21 of the Mines and Minerals Act simultaneously and the principle of double jeopardy shall not be a bar for such simultaneous prosecution.

28. Here it is relevant to deal, the conditions requisite for initiation of proceedings as dealt with in Chapter XIV of the Code of Criminal Procedure. An offence under section 379 of IPC is admittedly cognizable and, therefore, in respect of theft of sand from Government land, it will be lawful for the police to register a case, investigate the same and to lay a police report under Section 173 of the Code, upon which the jurisdictional Magistrate will be well within his jurisdiction to take cognizance as provided in Section 190(1)(b) of the Code of Criminal Procedure. To this extent, there is no conflict between the Mines and Minerals (Development and regulation) Act 1957 and the Code of Criminal Procedure and thus question of one overriding the other does not arise. Therefore, in such cases, where the cases have been registered only under the provisions of IPC, more particularly, under Section 379 of IPC in respect of theft of sand, the question of quashing the FIRs or any subsequent proceedings does not arise at all notwithstanding any thing contained in section 2 of the Mines and Mineral (Development and Regulation) Act, 1957.

29. In Halsbury's Laws of England, under the heading 'Principles of Criminal Liability' "Crime" is defined as follows :-

> "A crime is an unlawful act or default, which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment."

In Criminal Procedure Code 'Offence' is defined in Section 2(n) as follows :-

> "Offence means any act or omission made punishable by any law for the time being in force ....."

From aforesaid definitions, it appears that an unlawful act or omission is 'per se' punishable under one or more laws and the subsequent prosecution is merely' a step to bring home this liability to the offender under any existing procedure. In other words, it is the illegal act or omission which is

primarily punishable and the penal section of any particular statute is merely a name under which it is prosecuted before a court of law for that purpose, what is punishable is not the name given to it by any section of a penal statute, but the offence defined in that section.

30. The issue whether a person can be prosecuted for the offence under two different Acts along with other connected issues have also been considered and settled by the Apex Court in the case of State (NCT Of Delhi) vs Sanjay; 2014 (9) SCC 772. The relevant paragraphs No. 69,70, 71,72 and 73 of the said judgment are as follows:-

> Para 69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem 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.
>
> Para 70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.
>
> Para 71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence Under Sections 378 and 379 of the Indian Penal Code.
>
> Para 72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are

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

Para 73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence 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."

31. The aforesaid judgment of N.C.T. of Delhi vs Sanjay (supra) has been further considered and followed by the Apex Court in the case of The State Of Maharashtra Vs. Sayyed Hassan Sayyed Subhan and others; AIR 2018 SC 5348. In the said case the Apex Court considering the provisions of The Food Safety and Standards Act, 2006 was not in agreement with the conclusion of the High Court and recorded a finding that a perusal of the provisions of the The Food Safety and Standards Act, 2006 would make it clear that there is no bar for prosecution under the Indian Penal Code merely because the provisions in the The Food Safety and Standards Act, 2006 prescribe penalties. The relevant observations and findings of the Apex Court are as under:-

Para 6. There is no dispute that Section 55 of the FSS Act provides for penalty to be imposed for non compliance of the requirements of the Act, Rules or Regulations or orders issued thereunder by the Food Safety Officer. But, we are afraid that we cannot agree with the conclusion of the High Court that non compliance of the provisions of the Act, Rules or Regulations or orders cannot be subject matter of a prosecution under IPC unless expressly or impliedly barred. The High Court is clearly

wrong in holding that action can be initiated against defaulters only under Section 55 of FSS Act or proceedings under Section 68 for adjudication have to be taken. A further error was committed by the High Court in interpreting the scope of Section 188 of the IPC. Section 188 of the IPC does not only cover breach of law and order, the disobedience of which is punishable. Section 188 is attracted even in cases where the act complained of causes or tends to cause danger to human life, health or safety as well. We do not agree with the High Court that the prohibitory order of the Commissioner, Food and Safety is not an order contemplated under Chapter X of the IPC. We are also not in a position to accept the findings of the High Court that Section 55 of the FSS Act is the only provision which can be resorted to for non compliance of orders passed under the Act as it is a special enactment.

Para 7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

"Provisions as to offences punishable under two or more enactments - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

Para 8. In Hat Singh's (2003) 2 SCC 152 case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point."

32. One of the issues involved in this case also considered by the Division Bench of this Court in case of Mahendra Kumar Yadav and another Vs. State of U.P. 2014 SCC OnLine All 10026, wherein FIR was challenged. In the said case the FIR was lodged for alleged violation of provisions of Mines & Minerals (Development & Regulation) Act and U.P. Mines Minerals (concession)Rules. In that case the petitioners were not attributed with the charge of commission of an offence under Indian Penal Code. On the said factual situation, this Court quashed the FIR with the observation that quashing

of writ petition will not come in the way of the authorities concerned to file a complaint under Section 22 of Mines & Minerals(Development & Regulation) Act 1957.

33. At this stage this Court would like to refer the judgment of Apex Court in Lalita Kumari Vs. Govt. of U.P. and others 2014 (2) SCC 1. In the said case the Apex Court has held that it is mandatory on the part of the police officer to register the crime invoking Section 154 of Cr.P.C. if the information discloses the commission of a cognizable offence and no preliminary enquiry is permissible in such situation and if the information does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not.

Conclusion :-

34. On the aforesaid discussion , this Court has arrived on the following conclusion :-

(a) There is no dispute that an offence under Sub-Section 1 of Section 21 of the Act 1957 is cognizable as provided in Section 21(6)of the said Act, therefore in view of principles laid down by the Apex Court in case of Lalita Kumari(Supra) , it is lawful for police to register the case and to investigate the same as per provisions of the Section 154 of Cr.P.C. .In the present case in hand the police not only registered the case under the IPC but also registered the case under Mines & Minerals(Development & Regulation) Act 1957 because the offences as pointed out and registered under both the aforesaid Acts are cognizable , but the difficulty arises only in the matter of taking cognizance because Section 22 of the Act 1957 prohibits taking cognizance being taken except upon a complaint in writing made by a person authorized either by the Central Govt. or the State Govt. . If the act of the accused constitutes exclusively an offence under the Act 1957, it goes without saying that the police officer on completing the investigation cannot lay a police report under Section 173 of The Code of Criminal Procedure, because Court cannot take cognizance in view of the bar contained in Section 22 of the Act. If the act of accused makes out a cognizable offence under Indian Penal Code as well as an offence under Section 21 of the MMDR Act 1957, the registration of FIR under both the enactments is not illegal and the police can further investigate into such cases and file a police report under Section 173 of The Code of Criminal Procedure confining to the offence under Indian Penal Code alone. So far as offence under Section 21 of the Act 1957 is concerned , it is for the authorized person to file a complaint after investigation before the magistrate concerned,upon which cognizance can be taken by the magistrate concerned.

(b) In any event, if the police office files a police report (charge- sheet)under Section 173 Cr.P.C. in respect of offence under IPC as well as under Section 21 of Mines & Minerals (Development & Regulation) Act 1957, the magistrate may take cognizance of the offence under IPC alone and proceed with the trial. So far as offence under Section 21 of the Act 1957 is concerned , the magistrate can permit the officer concerned to file separate complaint and in case of filing such complaint by a person

authorized in that behalf by the Central Govt. or the State Govt. , can take cognizance under Section 22 of MMDR Act 1957.

35. After evaluating the submission advanced by the learned counsels for the respective parties in the light of discussion made above as well as under the conspectus of judicial pronouncements made in this regard by the various High Courts and the Apex Court, the issues involved in the present case are answered as follows:-

(i) If the act of accused makes out a cognizable offence under IPC as well as an offence under Section 21 of the MMDR Act 1957, the registration of FIR under both the enactments is not illegal , as there is no bar to investigate the matter by the police when the cognizable offence has taken place irrespective of penal provisions whether under the special enactment or general law. Since it is well settled that when there is a conflict between a special and general law, indisputably the special enactment will prevail over the general law , therefore on account of categorical bar under Section 22 of the Act 1957, the police officer cannot submit police report under Section 173 Cr.P.C. with regard to offence under Mines & Minerals(Development & Regulation) Act 1957.

(ii) Despite provisions provided under section 22 of the the Mines and Minerals (Development and Regulation) Act 1957, the police authorities can not be debarred from tacking action against the persons for committing theft of sand and minerals in the manner provided under the Code of Criminal Procedure. The ingredients to constitute offence under the Mines and Minerals (Development and Regulation) Act 1957 as well as offence under 378/379, etc. of Indian Penal Code are different , therefore doctrine of double jeopardy is not attracted. Hence the accused can be prosecuted simultaneously for one set of offence under two or more Acts.

(iii) On account of specific prohibition/bar, as contained in section 22 of the Mines and Minerals (Development and Regulation) Act 1957, accused cannot be prosecuted on the basis of police report under section 173 Cr.P.C. And can be prosecuted only on complaint made by the officer concerned in case of contravention of section 4 of the Mines and Minerals (Development and Regulation) Act 1957, but prosecution of accused on the basis of police report under section 173 Cr.P.C. for the offence under Indian Penal Code is not barred by Section 22 of the Mines and Minerals (Development and Regulation) Act 1957.

(iv) As per the provisions contained in section 22 of the Mines and Minerals (Development and Regulation) Act 1957, The Magistrate can not take cognizance for the offence under the Mines and Minerals (Development and Regulation) Act 1957 on the police report /charge-sheet under Section 173 of The Criminal Procedure Code, but can taken cognizance for the offence under Indian Penal Code , if any on the basis of same police report without awaiting the receipt of complaint that can be filed by the offcer concerned for taking cognizance regarding contravention of provisions of

the Mines and Minerals (Development and Regulation) Act 1957.

36. So far as argument advanced on behalf of the applicants that no prima facie offence under Sections 147, 148, 149, 336, 353, 307, 379 IPC and Section 4/21 Mines and Mineral (Development and Regulation) Act is made out against the applicant is concerned, this Court is of the view that it is well settled that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sprangly, only in such a appropriate cases, where uncontroverted allegations made in FIR or charge-sheet and the evidence relied in support of same do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage. It is also well settled that at the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegation cannot be even determined at the stage of summoning the accused. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court. Hence, criminal proceeding against the applicant for the offences under Indian Penal Code is not liable to be quashed.

37. In view of above, this Court is of the view that so far the cognizance taken by the Judicial Magistrate concerned on the impugned charge-sheet dated 14.04.2018 for the offences under the Indian Penal Code is concerned, it cannot be said to be illegal and without authority, but so far as the cognizance taken for the offence under the Mines and Minerals (Development and Regulation) Act on the impugned charge-sheet dated 14.04.2018 is concerned, the same is not liable to be sustained in the eyes of law on account of categorical bar contained in Section 22 of the the Mines and Minerals (Development and Regulation) Act 1957.

Result:-

38. Accordingly further proceeding of criminal case no. 1520 of 2018 pursuant to impugned charge-sheet dated 14.04.2018 arising out of case no. 461of 2017 so far as offence under section 4/21 of the Mines and Minerals (Development and Regulation) Act 1957 only is hereby quashed with liberty to the prosecution /officer concerned to file complaint against the applicants under the Mines and Minerals (Development and Regulation) Act 1957.

39. It is made clear that so far as order taking cognizance under Sections 147, 148, 149, 336, 353, 307, and 379 under Indian Penal Code are concerned, that has not been interfered by this Court and the concerned court below is at liberty to proceed in accordance with law against the applicants pursuant to charge-sheet dated 14.04.2018.

40. With the aforesaid observations and findings the application is disposed of.

41. Registrar General is directed to send the copy of this order to the concerned Court below as well as to the L.R. (Legal Remembrance) State of Uttar Pradesh Lucknow and Director General of Police

Uttar Pradesh Lucknow.

Order Date :- 10.07.2019 Sumaira