

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

**SUO MOTU CRIMINAL REVISION NO.1 OF 2023, SUO
MOTU CRIMINAL REVISION NO.2 OF 2023, SUO MOTU
CRIMINAL REVISION NO.3 OF 2023, SUO MOTU
CRIMINAL REVISION NO.4 OF 2023**

SUO MOTU CRIMINAL REVISION NO.1 OF 2023

HIGH COURT ON ITS OWN MOTION (IN
THE MATTER OF PUNISHMENT IMPOSED
IN CRIMINAL TRIAL)

... APPLICANT

Versus

STATE THR CURCHOREM P.S. AND ANR

... RESPONDENTS

WITH

SUO MOTU CRIMINAL REVISION NO.2 OF 2023

HIGH COURT ON ITS OWN MOTION (IN
THE MATTER OF PUNISHMENT IMPOSED
IN CRIMINAL TRIAL)

... APPLICANT

Versus

STATE OF GOA THROUGH VALPOI P.S.
AND 2 ORS

... RESPONDENTS

WITH

SUO MOTU CRIMINAL REVISION NO.3 OF 2023

HIGH COURT ON ITS OWN MOTION (IN
THE MATTER OF PUNISHMENT IMPOSED
IN CRIMINAL TRIAL)

... APPLICANT

Versus

STATE THR VALPOI P.S. AND 2 ORS

... RESPONDENTS

WITH

SUO MOTU CRIMINAL REVISION NO.4 OF 2023

HIGH COURT ON ITS OWN MOTION (IN
THE MATTER OF PUNISHMENT IMPOSED
IN CRIMINAL TRIAL)

... APPLICANT

Versus

STATE THR CURCHOREM P.S. AND ANR

... RESPONDENTS

Mr S. G. Bhobe, Public Prosecutor for respondent no.1 in all matters.
Mr A. Bhobe and Ms S. Shaikh, Advocate for the respondent no.2 in
SMCR 1/2023 and 3/2023 and for respondent nos. 2 and 3 in

2/2023.

Mr P. Talaulikar, Advocate for respondent nos. 2 and 3 in SMCR

3/2023.

Yashawant Nayak accused present in person.

Mr V. Daniel, Advocate for the respondent no. 2 in SMCR 4/2023.

CORAM:

BHARAT P. DESHPANDE, J

Date

12th February 2024

ORAL ORDER;

1. These Suo Motu Criminal Revisions were registered in view of the order dated 12.9.2023 passed in Writ Petition No. 312 of 2022 by the Division Bench of this Court.

2. The observations of the Division Bench specifically in paragraphs 6, 7, 8 and 9 read thus:-

6 *Learned Advocate General placed on record orders made in the following Criminal Cases:-*

(i) Criminal Case No.76/S/2020

(ii) Criminal Case No.77/S/2020

(iii) Criminal Case No.IPC/10/2021

(iv) Criminal Case No.IPC/4/2022

7 *From the perusal of the orders made in the above criminal cases, we find that persons who were prosecuted for the offence under Section 379 of the Indian Penal Code (IPC) for undertaking illegal quarrying and extraction operations inter alia from Government lands have pleaded guilty or have compromised matters. As a result, they have been convicted*

for offences punishable under Section 379 of IPC and certain provisions of the Goa, Daman and Diu Minor Minerals Concession Rules, 1985. However, we find that paltry fines have been imposed upon such persons, and they are let off.

- 8 *In the above circumstances, we direct the Registrar (Judicial) to see that the records and proceedings in the above cases, along with the orders passed therein, are called from the competent courts and the same are placed for consideration of the Learned Single Judge of this Court having the assignment to deal with the criminal revision applications under Section 397 r/w. Section 401 of the Code of Criminal Procedure. This exercise must be completed by the Registrar (Judicial) within fifteen days from today. The registrar (Judicial) is requested to place a copy of this order before the learned Single Judge.*
- 9 *Learned Advocate General also referred us to Section 30-B of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), which entered force w.e.f. 12.01.2015. He points out that in terms of this provision, a Special Court is constituted to try the offences under the MMDR Act or Rules made thereunder. He pointed out that there is a notification constituting the Additional Sessions Judge, Margao, as the Special Court*

for this purpose.

3. Accordingly, present Criminal Revisions were registered as Suo Motu by placing records and proceedings before this Court.

4. Perusal of the case papers, following aspects stand revealed.

5. Criminal Case No.77/S/2020 was filed by Curchorem Police Station on the basis of FIR 3/2020 dated 14.1.2020 under Section 379 of IPC and Section 38 read with Section 62(1) and (2) of the Goa, Daman and Diu Minor Mineral Concession Rules 1985 against accused Yashwant Nayak. Chargesheet shows that the said accused Yashwant Nayak with effect from 13.1.2020 at Santana Village, Sanguem Goa committed theft by illegally extracting 450 laterite stones from open place belonging to State of Goa and thus committed offence punishable under Section 379 of IPC and Section 38 read with Section 62(1) (2) of the Goa, Daman and Diu Minor Mineral Concession Rules 1985. Learned Magistrate took cognizance of the chargesheet and issued process against the accused. Record shows that said matter was placed before the Lok Adalat on 25.9.2021 and the accused filed consent terms and accordingly, he was directed to pay an amount of Rs.7,000/- towards fine. With this order said Criminal case was disposed of.

6. In Suo Motu Criminal Revision No. 2 of 2023, respondent nos. 2 and 3 were shown as accused in Criminal Case No.10/IPC/2021 filed before the learned Magistrate at Valpoi. Records and proceedings of the said criminal case shows that chargesheet was filed against Kashinath Nadkarni and Tanaji Dessai alleging that on 24.12.2020 at Pissurelm Sattari Goa in survey no. 30/1, said accused persons illegally extracted stones with machinery without obtaining necessary permissions from the concerned authority and caused loss to the Government. Accordingly, it is claimed that said accused nos.1 and 2 committed offence punishable under Section 379 IPC and Section 3 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985. Learned Magistrate after taking cognizance issued process against the accused persons. Vide order dated 20.1.2023, learned Magistrate observed that when the charges were explained to the accused persons, they pleaded guilty and accordingly both the said accused persons were convicted for the offence punishable under Section 379 of IPC and Section 3 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985. Learned Magistrate then passed an order and placed it for awarding sentence. After hearing the accused, learned Magistrate passed the order of sentencing both the accused persons under Section 379 of IPC and Section 3 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985 till rising of the Court and to pay fine of Rs.1,000/- each in connection with the offence

under Section 379 of IPC and Rs.2500/- each against the offence punishable under Section 3 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985.

7. Suo Motu Criminal Revision No.3 of 2023 is filed against Basavraj Haranal and Pandurang Gaonkar. Records and proceedings of Criminal Case No.IPC/4/2022 pending on the file of the learned Judicial Magistrate, First Class at Valpoi shows that Valpoi Police station filed a chargesheet against the said accused persons for the offence punishable under Section 379 and Section 3, 38 and 62 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985. It was alleged in the chargesheet that accused persons on 27.12.2020 near Padeli Bridge, Guleli Sattari Goa were found illegally transporting laterite stones in the tipper truck without valid transit pass or valid documents for transportation and without permission from the concerned authority for operating laterite stones quarry at Kulan Guleli and were found supplying illegally extracted laterite stones to other parties.

8. Learned Magistrate took cognizance of the said case and on explaining substance of accusation, both the accused persons pleaded guilty, which is found recorded by learned Magistrate in its order dated 29.7.2022. Accordingly, learned Magistrate convicted the said accused nos. 1 and 2 for the offence punishable under Section 379 of IPC and Section 3, 38 and 62 of the Goa, Daman and Diu Minor

Mineral Concession Rules 1985. Both the accused persons though pleaded guilty and convicted for the above offences and were directed to pay fine of Rs.500/- each for the offence punishable under Section 379 of IPC and Rs.4,500/- each under Section 62 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985 and in default to undergo simple imprisonment for one month.

9. Suo Motu Criminal Revision No.4 of 2023 is against Gokuldas Verenkar. Records and proceedings of the trial Court at Sanguem show that chargesheet was filed against Gokuldas for the offence punishable under Section 379 of IPC and Section 62(1)(2) of the Goa, Daman and Diu Minor Mineral Concession Rules 1985. Allegations against Gokuldas is that he carried out illegal laterite stone extraction without obtaining permission from the concerned authority and thereby committed theft of the extracted laterite stone from survey no.50/o of Bandol, Kalay, village Sanguem Taluka. The accused appeared before the learned Magistrate and thereafter record shows that matter was placed before the Lok Adalat on 25.9.2021 wherein offence was compounded and Gokuldas was directed to pay Rs.7,000/- towards fine.

10. First and foremost aspect is of the jurisdiction of the learned Magistrate in entertaining such chargesheets. Admittedly all these offences are connected with the Goa, Daman and Diu Minor Mineral Concession Rules 1985 which are considered to be property of the

Government. Mines and Minerals(Development and Regulation) Act, 1957 provides that matters in connection with offence committed under the said Act are required to be dealt with by a Special Court.

11. Government of Goa vide notification dated 25.1.2019 has published in the Government Official Gazette Series II No.44 dated 31.1.2019 and in exercise of the power conferred under sub section 1 of Section 30B of the Mines and Minerals(Development and Regulation) Act, 1957 constitute Court of District Judge-1 and Additional Sessions Judge, South Goa Margao as a Special Court for whole of the State of Goa, for speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section(1A) of Section 4 of the said Act.

12. Mr S. G. Bhobe, learned Public Prosecutor appearing for the State would submit that first of all the Magistrate before whom the chargesheets were filed had no jurisdiction to entertain such chargesheets when provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and Rules framed thereunder are involved. He also submitted that all the chargesheets show that minor minerals belongs to the State have been removed without any permission or licences and sold by the accused persons which apart from committing theft, is a loss to the government.

13. Section 4 of the Mines and Minerals(Development and Regulation) Act, 1957 reads thus:-

4. Prospecting or mining operations to be under licence or lease.

4. (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, 1[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 Mineral concession 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 mineral concession.

14. Perusal of the above provision would go to show that no persons shall undertake mining operations in any area except in accordance with terms and conditions of the licence or lease or grant as the case may be.

15. Section 30B of the Mines and Minerals(Development and Regulation) Act, 1957 empowers the State Government to constitute Special Courts for speedy disposal of the trial of the offence for contravention of the provisions of Section 4 of the Mines and Minerals (Development and Regulation) Act, 1957

16. Allegations against the respondents/accused persons in the

present chargesheet clearly show that apart from committing theft under section 379 of IPC, allegations also revolved upon extraction of laterite stone from Government property or without licence. Prima facie such exercise could be termed as mining operation. Similarly offence under Section 379 of IPC is also serious when it comes to the natural resources affecting environment of the State.

17. Record shows that once the Special Court is constituted by notification dated 25.1.2019, all these matters were required to be either filed or committed to the Special Court. Learned Magistrate were not having jurisdiction to continue such cases after notification was issued by the Government of Goa constituting a Special Court. Thus, the impugned orders are without jurisdiction and therefore needs to be quashed and set aside.

18. Only remedy available to this Court is to quash and set aside the impugned orders of conviction and imposing fine/sentence either on the plea of guilty or settling before the Lok Adalat and to remand the matter to the learned Magistrate to consider whether matter needs to be committed to the Special Court as observed above.

19. Accordingly, Suo Motu Criminal Revisions stand allowed.

20. Impugned orders of accepting the proposal of settlement before the Lok Adalat or conviction of accused persons on the plea of guilty are quashed and set aside. Matters are remanded to the respective Magistrates with a direction to consider whether on the facts and

circumstances of the cases, same are required to be committed to the Special Court and proceed accordingly. Respondents/accused are directed to appear before the learned Magistrate and co-operate with the respective Courts.

21. Suo Motu Criminal Revisions stand disposed of in above terms.

BHARAT P. DESHPANDE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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