



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 13th OF MAY, 2025

MISC. CRIMINAL CASE No. 2555 of 2023

AMOL SINGH YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Bhupendra Singh Dhakad – Advocate for applicant.

Dr. Anjali Gyanani – Public Prosecutor for respondent/State.

ORDER

This application, under Section 482 of Cr.P.C., has been filed for quashment of FIR in Crime No.300/2022 registered at Police Station Badarwas, District Shivpuri (M.P.) for offences punishable under Sections 379, 411 IPC.

2. It is submitted by counsel for applicant that applicant was working as Panchayat Secretary. Sand was found stored in the house of Narendra Yadav who has stated that the sand was stored by applicant and on the statement made by Narendra Yadav applicant has been arrayed as an accused in Crime No.300/2022 registered at Police Station Badarwas, District Shivpuri (M.P.).



3. It is submitted by counsel for applicant that since applicant was working as Secretary and the sand was stored for the purposes of constructing CC road therefore, in view of Rules 3, 4 of M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2022 (for brevity “Rules, 2022”), Panchayat cannot be made an accused. It is further submitted that the entire case is based on ocular evidence of Narendra Yadav and there is nothing on record to show that it was applicant who had stored sand in the house of Narendra Yadav. It is further submitted that even otherwise Narendra Yadav has specifically stated that sand was stored for the purposes of constructing CC road in front of his house.

4. Heard learned counsel for applicant.

5. So far as applicability of Rules 3, 4 of Rules, 2022 is concerned, it is suffice to mention here that the exception under Rule 4 of Rules, 2022 has been granted to the Gram Panchayat for transportation and storage of minor minerals quarried from the Government lands for public works. This rule cannot be interpreted to the extent that the Gram Panchayat can commit theft or can illegally excavate the sand. State Government is the owner of every mineral and therefore the illegal excavation of the same would certainly amount to commission of theft. Further, so far as the submission made by counsel for applicant that the sand in question was stored for the purposes of constructing CC road in front of the house of Narendra Yadav is concerned, the counsel for applicant has developed his argument on the basis of the document Annexure P-4 to show that a CC road was sanctioned from Aadiwasi Basti to Ghurwar. It was fairly conceded by Shri Dhakad that Ghurwar and Rijaudi are two separate villages and Ghurwar falls within the Gram Panchayat Rijaudi.



6. Now, the only question for consideration is as to whether the aforesaid document which has been filed by applicant can be considered to be a document to show that the CC road was being constructed in front of the house of Narendra Yadav or not?

7. The case diary has been produced. From the statement of Narendra Yadav, it is clear that he is the resident of village Rijaudi and not Ghurwar. Thus, the measurement book which has been relied upon by applicant to show that the sand was stored for the purpose of construction of CC road in front of the house of Narendra Yadav is not supported by the documents filed by applicant. It is not the case of applicant that the sand was purchased by the Gram Panchayat. Counsel for applicant could not point out any provision of law which authorizes the Gram Panchayat to illegally excavate the sand. Furthermore, it is not the case of applicant, that the sand in question was quarried from Govt. land in legal manner. So far as the absence of documentary proof to show that it was applicant who had stored the sand in question is concerned, it is suffice to mention here that the prosecution can prove its case on the basis of ocular evidence or documentary evidence or on the basis of both documentary and ocular evidence. Merely because no documentary evidence has been collected by the police to show that the sand was stored by applicant, this Court is of considered opinion that this Court cannot ignore the statement of Narendra Yadav which was recorded under Section 161 of Cr.P.C. in which he had specifically stated that the sand was stored by applicant. Further, the applicant was/is the Panchayat Secretary and he is claiming that sand was stored by Gram Panchayat for construction of CC road, therefore, being Secretary it can be presumed that it was applicant who had stored the sand.



8. The Supreme Court in the case of **Jayant and others v. State of M.P.**, reported in **(2021) 2 SCC 670** has held as under:

“17. Now so far as the submission on behalf of the private appellant violators that in view of the fact that the violators were permitted to compound the violation in exercise of powers under Rule 53 of the 1996 Rules or Rule 18 of the 2006 Rules and the violators accepted the decision and deposited the amount of penalty determined by the appropriate authority for compounding the offences/violations, there cannot be any further criminal proceedings for the offences under Sections 379 and 414 IPC and Sections 4/21 of the MMDR Act and the reliance placed on Section 23-A of the MMDR Act is concerned, it is true that in the present case the appropriate authority determined the penalty under Rule 53 of the 1996 Rules/Rule 18 of the 2006 Rules, which the private appellant violators paid and therefore the bar contained in sub-section (2) of Section 23-A of the MMDR Act will be attracted.

17.1. Section 23-A as it stands today has been brought on the statute in the year 1972 on the recommendations of the Mineral Advisory Board which provides that any offence punishable under the MMDR Act or any Rules made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify. Subsection (2) of Section 23-A further provides that where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith. Thus, the bar under sub-section (2) of Section 23-A shall be applicable with respect to the offences under the MMDR Act or any Rules made thereunder.

17.2. However, the bar contained in sub-section (2) of Section 23-A shall not be applicable for the offences under IPC, such as,



Sections 379 and 414 IPC. In the present case, as observed and held hereinabove, the offences under the MMDR Act or any Rules made thereunder and the offences under IPC are different and distinct offences.

17.3. Therefore, as in the present case, the Mining Inspectors prepared the cases under Rule 53 of the 1996 Rules and submitted them before the Mining Officers with the proposals of compounding the same for the amount calculated according to the Rules concerned and the Collector approved the said proposal and thereafter the private appellant violators accepted the decision and deposited the amount of penalty determined by the Collector for compounding the cases in view of sub-section (2) of Section 23-A of the MMDR Act and the 1996 Rules and even the 2006 Rules are framed in exercise of the powers under Section 15 of the MMDR Act, criminal complaints/proceedings for the offences under Sections 4/21 of the MMDR Act are not permissible and are not required to be proceeded further in view of the bar contained in subsection (2) of Section 23-A of the MMDR Act. At the same time, as observed hereinabove, the criminal complaints/proceedings for the offences under IPC — Sections 379/414 IPC which are held to be distinct and different can be proceeded further, subject to the observations made hereinabove.

18. However, our above conclusions are considering the provisions of Section 23-A of the MMDR Act, as it stands today. It might be true that by permitting the violators to compound the offences under the MMDR Act or the Rules made thereunder, the State may get the revenue and the same shall be on the principle of person who causes the damage shall have to compensate the damage and shall have to pay the penalty like the principle of polluters to pay in case of damage to the environment. However, in view of the large-scale damages being caused to the nature and as observed and held by this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , the policy and object of the MMDR Act and the Rules 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 and considering the observations made by this Court in the aforesaid decision, reproduced hereinabove, and when the violations like this are increasing and the serious damage is caused to the nature and the earth and it also affects the groundwater levels, etc. and it causes severe damage as observed by this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , reproduced hereinabove, we are of the opinion that the violators cannot be permitted to go scot-free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.

19. It is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the nature. As observed by this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , excessive in-stream sand-and-gravel mining from riverbeds and like resources causes the degradation of rivers. It is further observed that 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. Even otherwise, sand/mines is a public property and the State is the custodian of the said public property and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological imbalance and causing damages to the nature in any form. As the provisions of Section 23-A are not under challenge and Section 23-A of the MMDR Act so long as it stands, we leave the matter there and leave it to the wisdom of the legislatures and the States concerned.”

9. Thus, illegal excavation of sand or any other minor mineral is causing great damage to the ecological system of the area and it has to be dealt with iron hands. Furthermore, filing of charge-sheet by itself would not mean that the guilt of the suspect/accused has been established. The allegations are yet to



be proved by the prosecution. In the light of judgments passed by the Supreme Court in the cases of **XYZ v. State of Gujarat** reported in (2019) 10 SCC 337, **State of Tamil Nadu Vs. S. Martin & Ors.** reported in (2018) 5 SCC 718, **Ajay Kumar Das v. State of Jharkhand**, reported in (2011) 12 SCC 319, **Mohd. Akram Siddiqui v. State of Bihar** reported in (2019) 13 SCC 350, **State of A.P. v. Gourishetty Mahesh** reported in (2010) 11 SCC 226, **M. Srikanth v. State of Telangana**, reported in (2019) 10 SCC 373, **CBI v. Arvind Khanna** reported in (2019) 10 SCC 686, **State of MP Vs. Kunwar Singh** by order dated 30.06.2021 passed in Cr.A. No.709/2021, **Munshiram v. State of Rajasthan**, reported in (2018) 5 SCC 678, **Teeja Devi v. State of Rajasthan** reported in (2014) 15 SCC 221, **State of Orissa v. Ujjal Kumar Burdhan**, reported in (2012) 4 SCC 547, **S. Khushboo v. Kanniammal** reported in (2010) 5 SCC 600, **Sangeeta Agrawal v. State of U.P.**, reported in (2019) 2 SCC 336, **Amit Kapoor v. Ramesh Chander** reported in (2012) 9 SCC 460, **Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy** reported in (2012) 12 SCC 437 and **M.N. Ojha v. Alok Kumar Srivastav** reported in (2009) 9 SCC 682, this Court can quash the proceedings only if the uncontroverted allegations do not make out an offence.

10. In view of the specific statement of Narendra Yadav, according to which the sand was stored by applicant, this Court is of considered opinion that no case is made out warranting interference. Application fails and is hereby *dismissed*.

(G. S. AHLUWALIA)
JUDGE