

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 30TH DAY OF MARCH 2021 / 9TH CHAITHRA, 1943

WP(C).No.10387 OF 2020(W)

PETITIONER/S:

SHYBI.C.J
AGED 42 YEARS
CHULLIYILLAPLAKKAL HOUSE, KOOTALA P O,
THRISSUR-680652.

BY ADV. SRI.C.DHEERAJ RAJAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY, HOME
DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
- 2 INSPECTOR GENERAL OF POLICE,
THRISSUR RANGE, THRISSUR
- 3 SUPERINTENDENT OF POLICE,
KALYAN NAGAR, AYYANTHOLE, THRISSUR-680003.
- 4 STATION HOUSE OFFICER,
MANNUTHY POLICE STATION, THRISSUR.

OTHER PRESENT:

SR.PP.C.S.HRITHWIK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-01-2021, THE COURT ON 30-03-2021 DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 30th day of March, 2021

Petitioner is aggrieved by the fourth respondent's failure to take action on Ext.P5 complaint. The allegation in the complaint is that the accused, in the guise of conducting a granite, quarry and crusher unit in the name and style "M/s.Four Star Granites Ltd", is extracting granite far in excess of the permitted quantity and is thereby committing theft, which is an offence punishable under Section 379 of the IPC.

2. Sri.Dheeraj Rajan, learned Counsel for the petitioner relied on the decision of the Apex Court in Jayant v. State of Madhya Pradesh (judgment in Criminal Appeal Nos.824-825 of 2020) in support of his contention that, illegal extraction/exploitation of natural resources will

amount to theft, punishable under Section 379 of IPC. Particular emphasis was laid on paragraphs 11 and 13 of the judgment, which are extracted hereunder:

"11. Now so far as the submission on behalf of the private appellants-violators that in view of the fact that 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 Section 4/21 of the MMDR Act and the reliance placed on Section 23A 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 appellants-violators paid and therefore the bar contained in sub-section 2 of Section 23A of the MMDR Act will be attracted. Section 23A 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 rule 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. Sub-section 2 of Section 23A 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 23A shall be applicable with respect to offences under the MMR Act or any rule made thereunder. However, the bar contained in sub-section 2 of Section 23A shall not be applicable for the offences under the IPC, such as, Section 379 and 414 IPC. In the present case, as observed and held hereinabove, the offences under the MMDR Act or any rule made thereunder and the offences under the IPC are different and distinct offences. 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 concerned rules and the Collector approved the said proposal and thereafter the private appellants- 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 23A 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 Sectuibs 4/21 of the MMDR Act are not

permissible and are not required to be proceeded further in view of the bar contained in sub-section 2 of Section 23A of the MMDR Act. At the same time, as observed hereinabove, the criminal complaints/proceedings for the offences under the IPC-Sections 379/414 IPC which are held to be distinct and different can be proceeded further, subject to the observations made hereinabove.

However, our above conclusions are considering the provisions of Section 23A 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 the case of Sanjay (supra), the policy and object of MMDR Act and 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 ground water levels etc. and it causes severe damage as observed by this Court in the case of Sanjay (supra),

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.

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 the case of Sanjay (supra), excessive in-stream sand-and-gravel mining from river beds 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 23A are not under challenge and Section 23A 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 concerned States.

13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder visa-a-vs the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, 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 authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an

order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

3. Attention was also invited to the decision in Kanwar Pal Singh v. State of Uttar Pradesh [Laws SC 2019 1280]. Therein, after referring to the public trust doctrine, the Apex Court rejected the contention that, sand being an immovable property as per Section 3(26) of the General Clauses Act, its excavation will not constitute the offence of theft. It was held that, on being excavated, sand loses its attachment to the earth, ergo, it becomes movable property or goods capable of being stolen.

4. The precedents aforementioned leave no room for doubt that illegal extraction of granite, without requisite permit or in violation of the permit conditions, will amount to theft.

5. The petitioner having submitted Ext.P5 complaint alleging that the accused is extracting granite in excess of the permitted quantity, the

4th respondent is bound to consider the complaint and take further action.

In the result, the writ petition is disposed of, directing the 4th respondent to consider Ext.P5 and take appropriate action thereon within two weeks of receipt of a copy of this judgment.

Sd/-

V.G.ARUN
JUDGE

Scl/

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE NOTICE DATED
21.12.2018 ISSUED BY MINING AND GEOLOGY
DEPARTMENT, THRISSUR.
- EXHIBIT P2 THE TRUE COPY OF THE CHALLAN DATED
24.12.2018.
- EXHIBIT P3 THE TRUE COPY OF THE NOTICE DATED
26.03.2019 ISSUED BY THE MINING AND
GEOLOGY DEPARTMENT.
- EXHIBIT P4 THE TRUE COPY OF THE CHALLAN DATED
27.03.2019
- EXHIBIT P5 THE TRUE COPY OF THE WRITTEN COMPLAINT
PREFERRED BY THE PETITIONER BEFORE THE
4TH RESPONDENT.