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LAGAMA v. THE STATE OF KARNATAKA , 2021 PLRonline 5105 (Kar.)

HIGH COURT OF KARNATAKA DHARWAD BENCH

BEFORE : JUSTICE SHIVASHANKAR AMARANNAVAR

LAGAMA v. THE STATE OF KARNATAKA

CRL. PET.NO. 102340/ 2018

30.07.2021

Mines and Minerals (Development and Regulation) Act, 1957 S. 22 - CrPC S. 2(d) - Karnataka [minor](#) Mineral Concession Rules, 1994, Rules 2(1)(a-1-a) - Police Inspector was not competent to file complaint and register the first information report - Firstly, the Police Inspector who has filed the complaint does not state in the complaint that he is authorized by the State to file such complaint. Secondly, even if he is an authorized person, he has to file a complaint before the concerned Court and not before the police as the definition of complaint excludes the police report - Therefore, the impugned first information report for the offence under the provisions of MMDR Act is incompetent. [Para 7]

SUNANDA P. PATIL, ADV., STATE [public prosecutor](#) HIGH COURT OF KARNATAKA DHARWAD BENCH

ORDER

Heard the learned counsel for the petitioners and learned HCGP.

2.This petition is filed seeking to quash the [fir](#) and complaint dated 19.01.2018 in Crime No.18/2018 of Yamakanmaradi Police Station registered for the offence under Section 379 of IPC and Section 4(1), 4(1-A) and Section 21 of Mines and Minerals (Development and Regulation) Act, (hereinafter referred to as the 'MMDR Act', for brevity) 1957 as against the petitioners. The said FIR has been registered on the information filed by CPI Hukkeri circle.

3.It was alleged that on the basis of credible information of illegal mining and transporting of sand on 19.01.2018 at 9.00 a.m., the complainant along with his staff intercepted the TATA 407 Tempo bearing registration No.KA-26/4809 coming from Narasingpur towards Managutti cross, within the limits of Yamakanmaradi Police Station. Upon checking, the said vehicle was found transporting sand worth Rs.3,000/-. Upon enquiry, the crew of the said vehicle 407 Tempo it is revealed that the sand was illegally extracted from backwater of Ghataprabha river, Hidkal Dam within limits of Beeranaholi.

4.The learned counsel for the petitioners relying on Section 22 of the MMDR Act and Section

2(d) of Code of Criminal Procedure, 1973 and Rules 2(1)(a-1-a) of The Karnataka Minor Mineral Concession Rules, 1994 submits that Police Inspector was not competent to file complaint and register the first information report.

5.Learned HCGP submits that the case is registered for the offence under Section 379 of IPC also and the Police Officer is competent to register a case for the said offence.

6. Section 22 of MMDR Act bars taking cognizance of the offence punishable under the said Act, except upon the complaint in writing made by a person authorized in that behalf by the Central Government or the State Government. Complaint as defined under Section 2(d) of Cr.P.C. excludes a Police report.

7. Firstly, the Police Inspector who has filed the complaint does not state in the complaint that he is authorized by the State to file such complaint. Secondly, even if he is an authorized person, he has to file a complaint before the concerned Court and not before the police as the definition of complaint excludes the police report. Therefore, the impugned first information report for the offence under the provisions of MMDR Act is incompetent.

8. So far as the sustainability of first information report for the offence punishable under Section 379 of IPC, the Hon'ble Supreme Court in paragraphs 72 & 73 of the [judgment](#) in State (NCT of Delhi) Vs. Sanjay, (2014) 9 SCC 772, has held as follows:

“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, gravel 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 persons. In other words, in a case where there is a theft of sand and gravel 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.

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 riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 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. 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.”

(Emphasis supplied)

9. In the light of the aforesaid judgment and discussion, the first information report requires to be quashed only so far it relates to the offences punishable under Sections 4(1), 4(1A) and 21 of MMDR Act.

Therefore, petition is partly allowed. The FIR in crime No.18/2018 of Yamakanmaradi Police Station is quashed only so far as it relates for the offence under

Sections 4(1), 4(1A) and 21 of MMDR act.

Liberty is reserved to the Government to take appropriate measures to comply with Section 22 of MMDR Act.

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