



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CR. MMO No. 242 of 2022

Reserved on: 05.03.2026

Date of Decision: 21.4.2026

Vijay Kumar

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioners : Mr Rajiv Jiwan, Senior Advocate,
with M/s Prashant Sharma and Yug
Singhal, Advocate

For the Respondents : Mr Lokender Kutlehria, Additional
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of F.I.R. No.11 of 2022, dated 29.01.2022, registered at police Station Sujampur, District Hamirpur, H.P., for the commission of offences punishable under Sections 379 of the Indian Penal Code (IPC) and Sections 20 and 22 of the Mines and Minerals (Development & Regulation) Act 1957 (Mining Act).

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present petition are that the police were on patrolling duty on 28.01.2022. They received secret information at Jangalberi at 11:30 PM regarding the theft of minor minerals from a Khad with the help of JCB and Tippers. The police prepared a rukka and sent it to the police station, where an FIR was registered. The police went to the spot and found 13 tippers/trucks bearing registration numbers HP68A-2227, PB06-2974, PB06L-2724, HP68B-1574, HP53A-2575, HP57-8833, HP57-8832, HP73A-0713, HP65-3572, HP67-1605, HP68-2074, HP67-5252, and HP57A-6084 on the spot. Three tippers were filled with minor minerals. The police took the photographs and video recorded illegal mining. These minor minerals were being taken to Vijay Stone Crusher, District Kangra, H.P. The police arrested the accused and investigated the matter. The police obtained the demarcation of the spot and found that the mining was being carried out on the land belonging to the State, which was not leased to any person. No extraction of minor minerals was being carried out in Khasra No. 1049. The police prepared the charge sheet after the completion of the investigation and filed it before the Court.

3. Being aggrieved by the registration of the F.I.R and filing of the charge sheet, the petitioner filed the present petition for quashing the FIR and consequent proceedings arising out of the said F.I.R., asserting that the site where the mining was stated to be carried out was leased to one Sh. Bhim Singh Rangra, as per the lease deed dated 20.03.2021. No mining was being carried out on the land owned by the government. FIR does not mention the Khasra number over which the mining was being carried out. The machinery was not functioning, and Tippers were empty which fact can be verified from the photographs taken by the police. There was no violation of the terms and conditions of the Mining Lease. The offences under the Mining Act are non-cognizable, and no FIR could have been registered for the commission of those offences. The provisions of Section 120B of the IPC were wrongly invoked, as there is no evidence of any conspiracy; hence, it was prayed that the present petition be allowed and the FIR and consequential proceedings arising out of it be quashed.

4. The petition is opposed by filing a reply by respondents No. 1 to 3, making a preliminary submission regarding the lack of maintainability. The contents of the FIR

were reproduced. It was submitted that police had impounded 13 tippers and 5 JCBs. Twenty-nine owners and drivers were released after serving them notices under Section 41A of the Cr.P.C. Police associated Raj Singh as an independent witness during the operation. It was found after the investigation that the illegal mining was being carried out in Khasra No. 1050 and not in Khasra No. 1050/1. The police had also taken the photographs of the illegal mining and video recorded it. The removal of the minor minerals from the earth constitutes theft, which is a cognizable offence. Therefore, it was prayed that the present petition be dismissed.

5. A separate reply was filed by respondent Nos. 4 and 5, denying the contents of the petition. It was asserted that the industries department had executed a Mining lease of the land measuring 4-65-85 hectares, bearing Khasra number 1685/1 and 1685/2 in favour of the petitioner for 5 years with effect from 26.09.2018 till 25.09.2023 to run the Stone crusher in the name and style of M/s. Vijay Stone crusher. A Mining lease was also executed regarding Khasra No. 1050/1 in favour of Bhim Singh Rangra. The department had never allowed the petitioner to extract the minerals from the area leased to Bhim Singh

Rangra, for feeding his Stone crusher. Hence, it was prayed that the present petition be dismissed.

6. Separate rejoinders denying the contents of the replies and affirming those of the petition were filed.

7. I have heard Mr Rajiv Jiwan, learned Senior Counsel assisted by M/s Prashant Sharma and Yug Singhal, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

8. Mr Rajiv Jiwan, learned Senior Counsel, for the petitioner, submitted that the allegations in the FIR do not show the commission of any cognizable offence. The police had found after the investigation that mining was being carried out in Khasra No.1050/1, which area was allotted/leased to Bhim Singh Rangra, for carrying out mining activities. He has not filed any complaint against the petitioner. The petitioner was not even present on the spot, and he could not have been roped in by invoking the provisions of Section 120-B of the IPC. The offence punishable under the Mining Act is non-cognizable, and the police could not have filed any FIR. Hence, he prayed that the present petition be allowed and the FIR and consequential

proceedings arising out of it be quashed. He relied upon the judgment of this Court in *Shamsher Singh & another versus State of H.P. 2025:HHC:28248* in support of his submissions

9. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State, submitted that illegal mining was being carried out for the benefit of the Stone crusher owned by the petitioner, and the petitioner cannot claim that he has no concern with it. The industries department has categorically stated that Bhim Singh Rangra was not permitted to sell minor minerals to the petitioner, and the petitioner was not authorised to feed his Stone crusher from the land leased to Bhim Singh Rangra. Therefore, there was a violation of the provisions of the lease agreement entered into by Bhim Singh Rangra with the State, and the police had rightly registered the FIR and filed the charge sheet before the Court. The learned Trial Court is seized of the matter, and this Court should not exercise extraordinary jurisdiction in the present case; hence, he prayed that the present petition be dismissed.

10. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

11. The law relating to quashing of FIR was explained by the Hon'ble Supreme Court in *B.N. John v. State of U.P.*, 2025 SCC OnLine SC 7 as under: -

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) *Where the allegations made in the first information report or the complaint, even if they*

are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings, and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.” (emphasis added)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1), it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

12. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear

abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (i) the criminal complaint has been filed with *mala fides*; (ii) the FIR represents an abuse of the legal process; (iii) no *prima facie* offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (*State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*)

13. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

14. It was laid down by the Hon'ble Supreme Court in *State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772: (2014) 5 SCC (Cri) 437: 2014 SCC OnLine SC 672* that the Court cannot take the cognizance of the commission of an offence punishable under Section 21 of the Mining Act without the complaint made by the authorized officer. However, the police can file a charge sheet for the commission of an offence punishable under Section 379 of the IPC. It was observed:

“72. From a close reading of the provisions of the 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 the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for the commission of an offence under the MMDR Act on the basis of the 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 CrPC 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 the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the 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 an 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 a complaint that may be filed by the authorised officer for taking cognizance in respect of the 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 Magistrates concerned to proceed accordingly.”

15. This judgment was followed in *Kanwar Pal Singh v. State of U.P.*, (2020) 14 SCC 331: (2020) 4 SCC (Cri) 815: 2019 SCC OnLine SC 1652, wherein it was observed:

11. As noticed above, in the written submissions the appellant has relied upon *Belsund Sugar Co. Ltd. [Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620]*, *Sharat Babu Digumarti [Sharat Babu Digumarti v. State (NCT of Delhi), (2017) 2 SCC 18 : (2017) 1 SCC (Cri) 628]* and *Suresh Nanda [Suresh Nanda v. CBI, (2008) 3 SCC 674 : (2008) 2 SCC (Cri) 121]* to contend that where there is a special Act dealing with a special subject, resort cannot be taken to a general Act. The said submission has no force in view of the ratio in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the MMDR Act, 1957 is different from the offence punishable under Section 379 IPC. Thus, they are two “different” and not the “same offence”. It would be relevant to state here that the Delhi High Court in its decision in *Sanjay v. State [Sanjay v. State, 2009 SCC OnLine Del 525 : (2009) 109 DRJ 594]*, which was impugned in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, had accepted an identical argument to hold that once an offence is punishable under Section 21 of the MMDR Act, 1957, the offence would not be punishable under Section 379 IPC. This reasoning was rejected by this Court, and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.

12. We would also reject the contention raised by the appellant in the written submissions that the alleged

theft of sand is not punishable under Section 379 read with Section 378 IPC, as sand is an immovable property as per Section 3(26) of the General Clauses Act. In the present case, sand had been excavated and was, thereupon, no longer an immovable property. The sand, on being excavated, would lose its attachment to the earth; ergo, it is a movable property or goods capable of being stolen. (See Explanation 1 to Section 378 IPC and *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772: (2014) 5 SCC (Cri) 437]* as quoted above.)

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15. We would again advert to the decision in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, which had overruled the decision of the Calcutta High Court in *Seema Sarkar v. State [Seema Sarkar v. State, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95]* wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the MMDR Act, 1957 and Section 379 IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the MMDR Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court, which had directed that the FIR should not be treated as registered under Section 379 IPC but only under Section 21 of the MMDR Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* after referring to Section 26 of the General Clauses Act and the meaning of the expression "same offence", to observe that the offence under Section 21 read with Section 4 of the MMDR Act, 1957 and Section 379 IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere

violation of Section 4, which is an offence cognizable only under Section 21 of the MMDR Act, 1957 and not under any other law. There is no bar on the court from taking cognisance of the offence under Section 379 IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the MMDR Act, 1957, unlike Section 13(3)(iv) of the TOHO Act.

16. A similar view was taken in *Shamsher Singh* (supra).

17. Thus, in view of the binding precedents of the Hon'ble Supreme Court, the Court cannot take cognisance of the commission of an offence punishable under Section 21 of the Mining Act on a police report, therefore, the cognizance taken by the learned Trial Court of the commission of an offence punishable under Section 21 of the Mining Act on the police report is bad.

18. The status report submitted by the police mentions that the land was demarcated, and it was found that the mining was being carried out outside the land leased to Bhim Singh Rangra in Khasra No. 1050. The Field Kanungo issued a clarification that the area where the mining was being carried out belonged to the State of H.P. The area mentioned in the report was pointed out by the lease holder, but no mutation was sanctioned. The police have also recorded the statements of

Field Kanungo and Patwari, in which they stated that they had carried out the demarcation as per the law and issued the report. Therefore, the material on record *prima facie* shows that the theft of minor minerals was being carried out from the land owned by the State.

19. The copy of the charge sheet filed by the police shows that the minor minerals were being stolen and carried to Vijay Stone Crusher, owned by the petitioner. The petitioner has not disputed in the petition that mining activity was being carried out on the spot and has claimed in para 9A of the petition that the site in question, where the illegal mining was being carried out, was leased in favour of one Bhim Singh Rangra. He further stated that the mining activity, which was being carried out, was strictly in compliance with the Lease deed and no illegal mining was being carried out. The petitioner had parked his vehicles, which were at the disposal of the lessee, and there was no theft. Therefore, it is undisputed that the mining activity was being carried out at the petitioner's instance, and the police were justified in adding Section 120-B of the IPC.

20. It was submitted that the petitioner was not present on the spot, and he could not have been held liable. Reliance was placed upon *Shamsher Singh (supra)* in support of this submission. The Court had specifically found out in *Shamsher Singh (supra)* that execution of the power of attorney in favour of a person does not make a persona conspirator, especially when the power of attorney was executed after the incident. In the present case, the mining activity was being carried out at the petitioner's instance for his benefit, even as per the petition. Therefore, the cited judgment does not apply to the present case

21. The police have filed the chargesheet before the Court, and the learned Trial Court is seized of the matter. It was laid down by the Hon'ble Supreme Court in *Iqbal v. State of U.P.*, (2023) 8 SCC 734: 2023 SCC OnLine SC 949 that when the charge sheet has been filed, the learned Trial Court should be left to appreciate it. It was observed:

“At the same time, we also take notice of the fact that the investigation has been completed and the charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence, particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer a discharge application before the trial court under

Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and the charge sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any case for discharge is made out or not.”

22. It was submitted that the allegations in the FIR are false. This submission will not help the case of the petitioner because the Court exercising the inherent jurisdiction has to take the allegations in the FIR and the charge sheet to be correct, and it is not permissible to carry out a mini-trial to determine the truthfulness or otherwise of these allegations. It was laid down by the Hon'ble Supreme Court in *Priyanka Jaiswal vs. State of Jharkhand*, 2024 SCC OnLine SC 685, that the Court exercising extraordinary jurisdiction under Section 482 of Cr.P.C. cannot conduct a mini-trial or enter into an appreciation of evidence of a particular case. It was observed:-

“13. We say so for reasons more than one. This Court, in a catena of judgments, has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extraordinary jurisdiction can neither undertake to conduct a mini-trial nor enter into an appreciation of evidence of a particular

case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution, and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court, in the case of *Akhil Sharda 2022 SCC OnLine SC 820*, held to the following effect:

“28. Having gone through the impugned judgment and order passed by the High Court, by which the High Court has set aside the criminal proceedings in the exercise of powers under Section 482 Cr. P.C., it appears that the High Court has virtually conducted a mini-trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr. P.C. As observed and held by this Court in a catena of decisions no mini-trial can be conducted by the High Court in the exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into an appreciation of evidence of the particular case being considered.”

23. A similar view was taken in *Maneesha Yadav's case (supra)*, wherein it was held that: -

“13. As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint, even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view

that the present case would fall under Category-3 of the categories enumerated by this Court in the case of *Bhajan Lal (supra)*.

14. We may gainfully refer to the observations of this Court in the case of *Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home (2019) 11 SCC 706: 2018 INSC 1060*:

“14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]*. In *Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]*, this Court while deciding the question of whether the High Court could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16)

“16. Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [*Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365*] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”

24. Hence, it is not permissible for this Court to determine the veracity of the contents of the F.I.R. and to quash the same by holding that the contents of the same are false.

25. No other point was urged.

26. In view of the above, the present petition is partly allowed, and the FIR registered for the commission of offences punishable under sections 21 and 22 of the Mining Act is ordered to be quashed. The FIR will proceed for the commission of offences punishable under section 379 read with 120-B of IPC.

27. Petition stands disposed of in the above terms, so also pending applications, if any.

28. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

21st April, 2026
(ravinder)