

[Mines & Minerals Regulation Act] Non-Constitution Of Special Courts Cannot Affect Seizure & Confiscation Proceedings: Kerala High Court

2022 LiveLaw (Ker) 629

IN THE HIGH COURT OF KERALA AT ERNAKULAM

N. NAGARESH, J.

30 November, 2022

RAHUL P.U. versus THE GEOLOGIST

W.P.(C) Nos.17394, 20520, 21614, 27053, 27423, 29586, 29827, 29847, 29973, 31585, 31607, 31997, 32240, 32252, 32272, 33168, 33438, 33515, 33673, 33861, 33865, 33874, 33941, 34133, 34381, 34485, 34517, 34680, 34806, 34952, 35102, 35434, 35456, 35601, 35613, 35788, 36136, 36137, 36287, 36289 and 36307 of 2022

Petitioner: by Adv. Babu S. Nair

Respondents: by Deepa Narayanan, Sr. Government Pleader

J U D G M E N T

The question posed for consideration in these writ petitions is whether any mineral, tool, equipment, vehicle or any other thing can be seized under Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 and whether seized articles are liable to be confiscated under Section 21(4A), when no Special Court is constituted as contemplated under Section 30B of the Act, 1957. The petitioners would urge that seizure cannot be effected when no Special Court is notified under Section 30B.

2. In all the writ petitions in this batch of writ petitions, vehicles owned by the petitioners were seized by Police Officers / Revenue Officials alleging contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the MMDR Act', for short) and the Rules made thereunder.

3. The petitioners state that confiscation of any property including vehicles seized, can be only by an order of the Court competent to take cognisance of the offence under the MMDR Act. Section 30B of the MMDR Act mandated the State Government to constitute Special Court/s for speedy disposal of cases. The State Government has not constituted Special Courts so far.

4. If any complaint is made before any court, the parties can approach the courts for getting interim custody of vehicles, either under Section 451 or under Section 457 of the Code of Criminal Procedure, 1973. Since the State has not constituted Special Courts, there cannot be any prosecution for the offence and without a prosecution, there cannot be any confiscation, assert the petitioners. If confiscation is not legal, the seizure would also be bad in the eye of law.

5. The petitioners would further argue that the authorities who seized the vehicles are not officers specially empowered to effect seizure and the seizure is unsustainable on that score also. The authorities cannot even file a complaint in respect of the alleged offences, as there is no Special Court legally constituted. Unlike in other enactments like the Customs Act, Abkari Act, etc. providing separate parallel confiscation proceedings, under the MMDR Act only the court competent to take cognisance under Section 22 alone has power to confiscate. As there is no court competent to confiscate, there cannot be legal seizure, urged the petitioners.

6. The Special Government Pleader appearing for the respondents resisted the writ petition. As regards the competency of officials to effect seizure, the Special Government Pleader argued that under Section 102 Cr.P.C., a police officer has power to seize any

vehicle found under suspicious circumstances of commission of any offence. The Government Pleader relied on the Full Bench judgment in **Prakash Nayak v. District Collector** [AIR 2017 Ker. 55] in support of the proposition. A complaint from the competent authority is not necessary for the police to seize any vehicle.

7. When a police officer seizes a vehicle found under suspicious circumstances, the Police has to report such seizure to the jurisdictional Magistrate. If a vehicle is seized by a police officer suspecting violation of the provisions of the MMDR Act, the seizure will be reported to the Person Authorised, in view of Section 22 of the MMDR Act. A complaint from Person Authorised is not necessary for the police to seize a vehicle involved / suspected to be involved in an offence under the MMDR Act, contended the Government Pleader.

8. The Hon'ble Supreme Court has held in **Pradeep S. Wodeyar v. State of Karnataka** [2021 (14) SCALE 303] that the Sessions Court shall not take cognisance of an offence as a court of original jurisdiction unless the Magistrate commits the case to it. Under the MMDR Act, a Special Court cannot take cognisance of an offence as the Act does not empower the Special Court to take cognisance, urged the Government Pleader.

9. The counsel for the petitioners Sri. Babu S. Nair, on the other hand, argued that Section 30B of the MMDR Act mandates that Special Courts have to be constituted by the State for trying cases under the MMDR Act. When a power is given by the statute to do certain thing in a certain way, the things must be done in that way or not all and that other methods of performance are necessarily forbidden. As Special Courts are not constituted as mandated, there can be no prosecution and, in turn, there cannot be any confiscation. The seizure of vehicles of the petitioners is therefore highly arbitrary and is liable to be interfered with by this Court.

10. The counsel for the petitioner relied on the judgments of the Hon'ble Apex Court in **State of Uttar Pradesh v. Singhara Singh and others** [AIR 1964 SC 358], **Babu Varghese v. Bar Council of Kerala** [(1999) 3 SCC 422], **Chandra Kishore Jha v. Mahavir Prasad and others** [(1999) 8 SCC 266], **State of Jharkhand v. Ambay Cements** [(2005) 1 SCC 368], **Dipak Babaria and another v. State of Gujarat and others** [(2014) 3 SCC 502], **Zuari Cement Ltd. v. Regional Director, ESIC Hyderabad and others** [(2015) 7 SCC 690], **Vanaja v. State of Karnataka** [(2001) 4 SCC 9] and **Opto Circuit India Limited v. Axis Bank and others** [(2021) 6 SCC 707], to urge the point.

11. Relying on the judgment of the Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat** [AIR 2003 SC 638], the counsel for the petitioner argued that it is of no use to keep seized vehicles at the police station for a long period and the court shall pass orders immediately by taking appropriate bond and guarantee as well as security for return of the vehicles. In most of these cases, the seizure has not been even reported to the court / Person Authorised.

12. According to the counsel for the petitioners, the Hon'ble Apex Court has held in **Pradeep S. Wodeyar** (supra) that under Section 193 Cr.P.C., the Sessions Court shall not take cognisance of an offence as a court of original jurisdiction unless the Magistrate commits the case to it. But, the Apex Court has stated that there is exception when the statute expressly provides for otherwise. The MMDR Act does not provide that the Special Court could directly take cognisance of the offence. In Kerala, the State Government has not even constituted Special Courts.

13. I have heard M/s. Babu S. Nair, K. Rakesh, K.V. Gopinathan Nair, K.M. Firoz, K.K. Mohamed Rauf and P.M. Siraj, learned counsel appearing for various petitioners in the writ petitions and Smt. Deepa Narayanan, learned Senior Government Pleader representing the respondents.

14. The crux of the case projected by the petitioners is that since Section 30B of the MMDR Act contemplates constitution of Special Courts to try offences under the Act and since Special Courts are not constituted by the Government, prosecution is not possible and without prosecution, there cannot be any confiscation. If there cannot be a confiscation, then there cannot be any seizure either. If the petitioners' arguments are rejected, then a question would arise as to the competent courts which are to prosecute offences under the MMDR Act and which are competent to confiscate vehicles seized under the provisions of the Act.

15. At the outset, it is to be noted that though prosecution proceedings and confiscation proceedings may arise out of the same set of facts, they are distinct and different. Under Section 21(4A) of the MMDR Act, the court competent to take cognisance of the offence is empowered to confiscate any mineral, tool, equipment, vehicle or any other thing seized. Trial of the offences under the MMDR Act should be by Special Courts which are to be deemed as Court of Sessions, in view of Sections 30B and 30C of the Act. The conferral power of confiscation of vehicles is not dependent on whether a criminal prosecution for commission of offence under the MMDR Act has been launched against the offender. Confiscation is a separate and distinct proceeding from that of trial.

16. An examination of the Scheme of the MMDR Act and the relevant provisions of the Cr.P.C. would indeed make abundantly clear the intention of the legislature. The MMDR Act is intended to provide for the development and regulation of mines and minerals. The vehicles involved in all these writ petitions were seized when they were found transporting ordinary earth / red earth without permits/passes. This Court in **Construction Material Movers v. State of Kerala [2008 (4) KLT 909]** has held that ordinary sand/earth is a minor mineral. As per Section 2(e), "minor minerals" would include ordinary sand.

17. Section 4(1A) provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the MMDR Act. As per Rule 26(4) of the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 framed under the MMDR Act, any consignment of minerals without a valid Mineral Transit Pass shall be considered as illicit. Vehicles involved in these writ petitions were seized finding that the sand/earth carried were without valid passes/permits.

18. Sections 21 and 22 of the MMDR Act read as follows:

21. Penalties — (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State

Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

Explanation – On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression “raising, transporting or causing to raise or transport any mineral without any lawful authority” occurring in this Section, shall mean raising, transporting or causing to raise or transport any mineral by a person without prospecting licence, mining lease or composite licence or in contravention of the rules made under Section 23C.

22. Cognizance of offences — No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

Under Section 21(4A), any vehicle seized under sub-section (4) is liable to be confiscated by an order of the court competent to take cognizance of the offence.

19. The Apex Court in the judgment in *Pradeep S. Wodeyar* (supra) has held that Special Court does not have, in the absence of a specific provision in the MMDR Act, the power to take cognizance of an offence under the Act without the case being committed to it by the Magistrate under Section 209 Cr.P.C. Therefore, it is evident that it is the Magistrate’s Court which is competent to take cognizance of any offence under the MMDR Act and the power to confiscate vehicles involved in offences under the MMDR Act is vested with the court competent to take cognizance under Section 21(4A). Therefore, non-constitution of Special Courts under Section 30B cannot affect seizure and confiscation proceedings under the MMDR Act.

20. Now, let us examine whether the constitution of the Special Court is a mandatory requirement under Section 30B and whether absence of duly constituted Special Court would make prosecution of the offences under the Act impossible. Section 30B of the MMDR Act reads as follows:

30B. Constitution of Special Courts — (1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is or has been a District and Sessions Judge.

(4) Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order.

The words “The State Government **may**” with which Section 30B begins would only show that the Section is only an enabling provision for the State to constitute Special Courts for the purpose of speedy trial of offences under the Act. Section 30B does not give mandatory direction to constitute Special Courts.

21. If Special Courts are not established, the prosecution and trial of offences under the MMDR Act would be governed by the general provisions of the Cr.P.C. The MMDR Act neither expressly nor by implication states that Special Court can take cognisance of the offences under the Act as a court of original jurisdiction without the case being committed to it. There is no reason to think that charge sheet or a complaint can straight away be filed before the Special Court. In the judgment in **Gangula Ashok v. State of AP [2000 (1) KLT 609]**, the Hon’ble Apex Court expressed disagreement with the Full Bench judgment of Kerala High Court in **Hareendran v. Sarada [1995 (1) KLT 231]** and concurred with the judgment of Andhra Pradesh High Court in **Referring Officer rep. by State of AP v. Shekar Nair [1999 Car.L.J 4173]** which held that the mere fact that no procedure is prescribed or specified under the Special Act does not mean that the Special Act dispenses with the procedure for committal of case triable by Court of Sessions and that the Special Court gets original jurisdiction in the matter of initiations, enquiry or trial. There is no good reason why the procedural provisions of Cr.P.C. relating to power and mode of taking cognisance including Section 193 Cr.P.C. should not be applied to the Special Courts.

22. A Full Bench of this Court has considered the issue in **Prakash Nayak v. The District Collector, Kasaragod and others [AIR 2017 Ker. 55]** and has held as follows:

27. The general powers of the police for arrest and seizure under the Code of Criminal Procedure are not specifically ousted or excluded by any of the provisions of the MMDR Act. On the other hand the offence punishable under Section 21 is made specifically cognizable also. That the offence is made cognizable means that any police officer, competent and empowered to act under the Code of Criminal Procedure, is competent to make arrest and to make seizure of properties, but prosecution can be launched only by the persons authorised by the Government under Section 22 of the MMDR Act. Contraband articles including minerals are liable to confiscation by court orders under Sub Section 4A of Section 21 of the MMDR Act. The latter part of the Sub Section provides that the property shall be disposed of in accordance with the directions of such court. This means that appropriate orders including confiscation orders can be passed by the court having jurisdiction to take cognisance of an offence punishable under Sub Section (1) of Section 21, on a complaint brought by any officer authorised under Section 22 of the MMDR Act. Appropriate orders meant under Sub Section 4A will include even interim orders authorising interim custody under Section 451 of the Code of Criminal Procedure. The object of Sub Section 4A of Section 21 is not that the property seized under Sub Section 4 shall be liable to confiscation in all situations. What we find on an analysis of the various provisions is that confiscation of properties is authorised under Sub Section 4A, by orders of the court having jurisdiction. However the court is competent to pass appropriate orders, for disposal of the properties. In appropriate cases where the facts and situations are of extreme violation, confiscation will have to be ordered by the court. However, in the case of minerals illicitly transported or imported, confiscation must be the rule. But in the case of vehicles and other articles, appropriate orders including confiscation orders can be passed by the court having jurisdiction, and such properties can be appropriately dealt with.

In paragraph 29, the Full Bench further made the following findings on the general powers of the police under the Cr.P.C.:

29. As discussed, observed and found in the forgoing paragraphs, we come to the conclusion on the important questions of law that situations like the present one involving minerals or minor minerals not covered by the Sand Act in Kerala or the MMDR Rules in Kerala, or any other special law, can be dealt with under the MMDR Act, and proceedings including seizure, confiscation and prosecution can be initiated under the MMDR Act. We accordingly find that the reliefs as sought by the writ petitioners cannot be granted. We reiterate that as regards the general police powers under the Code of Criminal Procedure for arrest and seizure, there cannot be any doubt or challenge, when such powers are not specifically ousted or excluded by any special or local law. There are provisions in the MMDR Act, authorising the Government to appoint other categories of officers also to make seizure and to initiate prosecution. We find that this is only in addition to the general powers given to the police under the Code of Criminal Procedure. However, as regards cognizance of offences, there is a specific provision under Section 22, and once cognizance otherwise than on complaint as prescribed under the law is barred, such cognizance under the Code of Criminal Procedure may not be possible. Only to that extent, the general powers of police under the Code of Criminal Procedure will stand excluded. In view of the specific provisions in Section 22 of the MMDR Act, prosecution on the basis of a final report under Section 173(2) Cr.P.C. is not possible. As regards the other police powers including arrest and seizure, there is no specific exclusion by the special law, and so, such general powers can be exercised by the police, including the powers to make arrest, and to seize properties.

23. The counsel for the petitioners, relying on the Division Bench judgment of this Court in ***Abdul Majeed Kalathil v. District Collector, Malappuram and others*** [2009 (3) KLT 637], would urge that the provisions contained in the MMDR Act as to courts and confiscation, are vague and therefore this Court should not be hesitant to declare that the seizures of the vehicles of the petitioners is illegal.

24. The petitioners point out that in most of the special enactments which provide for prosecution as well as confiscation for the same offence, the sections concerned begin with the words “whether a prosecution is initiated or not”. There is no such clause in the MMDR Act. It would imply that there cannot be any confiscation proceeding without any prosecution proceeding.

25. I find that Rule 21(4A) clearly provides that any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4) shall be liable to be confiscated by an order of the court competent to take cognizance of the offence. Therefore, what is required for a valid seizure is only usage of vehicle to transport minerals without any lawful authority as envisaged in Section 21(4). Absence of the words “whether a prosecution is initiated or not” in Section 21(4A) is of no consequence.

For all the above reasons, the writ petitions are found to be without any merit and therefore the writ petitions are dismissed. The petitioners are directed to surrender their vehicles released pursuant to the interim orders obtained in these writ petitions, forthwith. It is made clear that the petitioners will be free to approach the competent court/authority for interim custody of vehicles or to compound the offences.