BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
21.04.2023	13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
THE HONOURABLE MR. JUSTICE M.DHANDAPANI
AND
THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

W.P. (MD) NO.14341 OF 2022
AND
W.M.P. (MD) NOS.10246, 10247, 10249, 10251, 21098 OF 2022

S. Kumar .. Petitioner

- Vs -

1. The District Collector
Kokkirakulam
Tirunelveli District,Tirunelveli.

2. The Assistant Director of Mines and Minerals,
Collector Office Compound,
Kokkirakulam, Tirunelveli District
Tirunelveli.

3. The Assistant Superintendent of Police
Nanguneri Sub Division
Nanguneri
Tirunelveli District.

4. The State Rep. by
The Sub Inspector of Police,
Munneerpallam Police Station
Munneerpallam
Tirunelveli District.

5. The Manager
Tamil Nadu Mercantile Bank
Branch at Palayamkottai
Near St.John College
Palayamkottai
Tirunelveli District.

6. The Addl. Chief Secretary to Government
Home Department
Chennai 600 009.

7. The Prl. Secretary to Government
Government of Tamil Nadu
Secretariat, Chennai 600 009.

8. The Director General of Police
No.4, Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004. .. Respondents
(RR-6 to 8 impleaded suo motu by
Order of Court dated 06.04.2023)

Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of mandamus, to direct the respondents, more particularly the first respondent permitting the petitioner to continue his business of crusher operation in the property bearing Survey Nos.844, 848 and

849/2 in the name of Venkateswara Crusher at Door No.815 Adamithipankuam, Tharuvai Village, Palayamkottai Taluk, Tirunelveli District and further direct the 1st and 2nd respondents to permit the petitioner to take back his vehicles as parked in his Patta land at Thuruvai Village, Palayamkottai, Tirunelveli District and also direct the5th respondent to permit the petitioner to operate Bank, Overdue Account bearing Account No. 152700050900047 with Tamil Nadu Mercantile Bank, Palayamkottai Branch near St. John College, Tirunelveli District and further direct the respondents to break open the seal of the petitioner's chamber and crusher office situated at Palayamkottai in the main road leading to Nagercoil from Tirunelveli and also further permit to take back all the vehicles such as Tractor, Tipper Lorry, Torus Lorry, Kittachi, JCB, Pockline, Bench Lorry, Motorcycle, Pickup Vehicle, TATA Pickup, Mahindra Pickup, Kobelco 380 (for removing mud) and two wheelers forthwith.

For Petitioner : Mr.Vallinayagam, SC, for
Mr. S.PalaniVelayutham

For Respondents : Mr.Veerakathiravan, AAG
Assisted by Mr., P.Thilak Kumar for
RR-1 to 4 & 6 to 8
Mr. N.Dilipkumar for R-5

Amicus Curiae : Mr. B.Vijay
Mr. N.Ananthapadmanabhan,
Senior counsel

ORDER

M.DHANDAPANI, J.

The damage caused to the environment by rampant mining, without following the legal safeguards has led to the enactment of various laws by the Central and State Governments have built in checks and balances to do away with illicit mining. Inspite of the same, many a time, the provisions in the enactments are put to test before the Courts, viz., the High Courts and the Supreme Court as also the Green Tribunal and the judicial arm had extended to safeguard the environment. Inspite of the diligent efforts taken by all the pillars of the democracy, putting a stop to the onslaught of illicit mining is getting to be an arduous task, thereby, many agencies of the State Government are pressed into service to stop illicit mining with the Government conferring power on the said agencies with regard to seizure, launching prosecution and compounding of offences. In the aftermath of the above, the present Full Bench has been constituted upon the orders of the Hon'ble Acting Chief Justice, which was upon a reference made by a Division

Bench of this Court, raising certain queries with regard to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder and also the various Government Orders, which have been issued on the basis of the aforesaid Act and the Rules.

2. Before detailing the reasons which prevailed upon the Division Bench to refer the matter to the Full Bench, the points of reference, as have been formulated and placed before this Court for an authoritative answer, are as under :-

> *"(a) Whether a police personnel can be brought within the ambit of "authorised officer empowered" under Sections 21(4), 22 and 23-A of the Act?*
>
> *(b) If the police officer cannot be brought within the fold of an authorised officer and hence he does not have the power to seize the vehicles/materials, what will be the effect of such seizure that had taken place after G.O.Ms. No. 170, dated 05.08.2020 was issued?*
>
> *(c) Whether the police officer who also happens to be the authorised officer, registers an FIR for IPC offence and the offence under the Act, can partly compound the offence under the Act and proceed further only for the IPC offence with respect to the very same transaction?*

(d) Whether the authorised officer, who seizes the vehicle under Section 21(4) of the Act alone can initiate private complaint under Section 22 of the Act or a different officer can be appointed for initiation of criminal proceedings under the Act-in other words, the officer, who seizes the vehicle and the officer who initiates the private complaint should be the same officer?

(e) If the Special Court alone is entitled to try the offence under the Act, can the power of compounding be given to an authorised officer or such a power should only be exercised by the Special Court?"

3. The scenario in which this reference has come before this Court needs to be briefly set out so as to have a better appreciation of the issue, based upon which this Court can deliberate and render opinion on the points of reference.

4. The writ petition was filed by the petitioner for a three-fold relief. In that, a writ directing the 1st respondent to permit the petitioner to continue his crusher operation in the subject property and further direction to respondents 1 and 2 to permit the petitioner to take back his vehicles, which have been parked in the patta land and to direct the 5th respondent to permit

the petitioner to operate his bank account. The issue with which this Court is concerned in the present reference relates to the return of the vehicles that were seized by the police authorities.

5. Since 29 vehicles were involved in the alleged offence, which were seized by the respondent/police authorities, return of the said vehicles were sought for by filing the above petition. When the matter was taken up for hearing on 26.10.2022, the Division Bench passed the following order:-

> *"8. We are not inclined to go into the merits of the case and the short issue that arises for consideration for the present is as to whether we have to exercise writ jurisdiction to order for release of vehicles in favour of the petitioner. In order to exercise such jurisdiction, we have to be satisfied that the seizure itself is illegal and not made in accordance with law.*
>
> *9. On carefully going through the counter affidavit filed by the respondents, we are not clear as to whether the revenue authority had given a complaint after the seizure to the jurisdictional Court, as directed by the Division Bench of this Court in WP(MD) No. 19936 of 2017 etc., dated 29.10.2018. The documents that have been produced before this Court only show that attempts have been made to file Form-91 before the Judicial Magistrate No. V, Tirunelveli. It is not clear*

as to whether this Court is a Special Court, which can try offences involving the Mines and Minerals (Development and Regulation) Act, 1957. The copy application that was filed before the concerned Court seeking for return of vehicle, has been returned on 18.10.2022 with an endorsement that the property has not been remanded. The petitioner is not clear as to where he has to file the application seeking for return of vehicles and that is the reason why this writ petition has been filed before this Court.

10. The Division Bench of this Court in WP(MD) No. 19936 of 2017 etc., dated 29.10.2018 has made it very clear that after the seizure of the vehicle, the revenue officials are expected to make a complaint before the jurisdictional Court and such a complaint has to be made immediately after the seizure, preferably within a period of one week. Following the order passed by the Division Bench of this Court, proceedings have been issued in G.O.Ms. No. 170, Industries (MMC. 2) Department, dated 05.08.2020, which prescribes the procedure to be followed by the authorities after the seizure of the vehicle in a case involving offence under the Mines and Minerals (Development and Regulation) Act, 1957. It is not clear as to whether this procedure was followed by the respondents.

11. The learned Additional Advocate General submitted that he will file a status report on the query that has been raised by this Court and satisfy this Court that the seizure of

the vehicles has taken place in accordance with law. We deem it fit to direct the District Collector, Tirunelveli, to file a status report in this regard."

6. The Referring Bench, upon obtaining status report from the 1st respondent, in which it was placed on record that G.O. Ms. No.170 dated 5.8.2020 has been passed detailing the officers, who are authorised and competent to seize the vehicle and lay the private complaint before the competent jurisdictional Court, went on to make the following observation, by placing reliance on the decision of a co-ordinate Bench in ***Muthu – Vs – The District Collector &Ors. (W.P. (MD) No.19936/2017 – Dated 29.10.2018)***and the relevant portion is quoted hereunder :-

"4 .When the above writ petition came up for hearing on 17.11.2022, this Court, ongoing through G.O.Ms. No. 170, dated 05.08.2020, which was issued pursuant to theorders passed by the Division Bench, noticed that the Government Order was not in linewith the directions issued by the Division Bench. Consequently, certain queries wereraised by this Court. By way of answering the queries raised by this Court, a clarification petition has been filed in W.M.P.(MD) No. 21098/2022 to clarify the common order passed in Review Application No. 80/2019 in W.P.(MD) No. 19936/2017.

5 .The Division Bench while passing orders in the writ petition and in the review petition, had proceeded on the footing that the authorised officer under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act") to carry out seizure is only the revenue official. However, in G.O.Ms. No. 170, dated05.08.2020, apart from the revenue official, two other Government Orders have beenmentioned and as per G.O.Ms. No. 114, dated 18.09.2006, even police personnel notbelow the rank of Inspector of Police has been empowered to carry out the seizureunder Section 21(4) of the Act. This fact was not brought to the notice of the DivisionBench and hence the Division Bench throughout the order has only recognized therevenue officials as the authorised officer. Hence, the clarification petition has been filed to clarify that, apart from the revenue officials, even the police personnel is empowered to seize in their capacity as the authorised officer, under ection 21(4) of the Act."

7. The Referring Bench further held that in *Muthu case* whileit was held that it is only the Revenue Officials, who were authorised to carry out seizure under the Mines & Minerals (Development & Regulation) Act, 1957 (for short 'MMDR' Act'), however, the Government Order in G.O. Ms. No.170, dated 5.8.2020, had referred to two other Government Orders, one of which is G.O.

Ms. No.114 dated 18.9.2006 in which even police personnel not below the rank of Inspector of Police had been empowered to carry out the seizure u/s 21 (4) of the MMDR Act. It is further evident from the order of the Referring Bench that in the above scenario, clarification petition was filed before the Referring Bench to clarify the order of the coordinate Bench passed in Rev. Application No.80/2019 in W.P. (MD) No.19936/2017, as the empowerment of the police personnel not below the rank of Inspector of Police, by the Government vide G.O. Ms. No.114 dated 28.9.2006 was not brought to the notice of the Division Bench when Rev. Appln. No.80/2019 was dealt with.

8. The clarification has been sought by the respondents only premising their case that even as per G.O. Ms. No.114 dated 18.9.2006, police personnel not below the rank of Inspector of Police were clothed with power u/s 21 (4) of the MMDR Act and merely the non-recording of the said fact in the earlier order passed in *Muthu case* requires clarification to the effect that in addition to revenue officials, the police officials also have the power to seize the vehicles u/s 21 (4) of the MMDR Act and once held so, the seizure made by a police official cannot be called in question and the ambiguity projected by the

petitioner would fall down, which was heavily objected to by the petitioner by submitting that Section 21 (4) of the MMDR Act uses the word 'an officer', which would only mean a revenue official and there cannot be any plurality of officers designated for the purpose of seizure. The Reference Bench's attention was drawn to the other provisions of the MMDR Act, which upon consideration, has necessitated the above reference by formulating the above issues.

9. Learned senior counsel appearing for the petitioner, without touching the facts of the case, submitted that in *Muthu case* it has been clearly spelt out that the revenue officials alone are the authorised officers, who could be effect seizure of the vehicles and, therefore, the authorisation of the police personnel as an authorised officer is wholly erroneous, which has correctly been doubted by the Reference Court.

10. It is the further submission of the learned senior counsel that different connotations for *'authorised officer'* has been used u/s 21 (4), 22 and 23-A of the MMDR Act. Learned senior counsel, while placed reliance upon

G.O. Ms. No.1664, Industries Dept., dated 8.12.1981and G.O. Ms. No.626, Industries (K) Dept., dated 11.6.1986, in and by which persons not below the rank of Deputy Tahsildars of the Revenue Department and the Assistant Director of Geology and Mining, Assistant Geologists, Special Tahsildar (Mines), Special Deputy Tahsildar (Mines) of the Department of Geology and mining have been authorised as Executive Magistrate for the performance of functions specified u/s 21 (4).

11. Learned senior counsel for the petitioner, placed reliance on Section 2 (ii) of the Tamil Nadu Prevention of Illegal Mining Transportation and Storage of Minerals and Mineral Dealer's Rules, 2011, (for short 'Rules, 2011') in which the term *"Authorised Officer"* has been defined to mean the District Collector of the District concerned or such other officers as may be authorised by Government and emphasising the above, the learned senior counsel submits that Section 2 (iv), which defines the *"competent authority"* as the person authorised u/s 22 of the MMDR Act. Therefore, Section 2 (ii) and 2 (iv) read in conjunction, would only mean that the District Collector or such other

officer, as provided for under rules, 2011 alone could be the authorised officers, empowered to seize the vehicle u/s 21 (4) of the MMDR Act.

12. It is the submission of the learned senior counsel that when Rules, 2011, defines the District Collector as the authorised officer, the Government Orders prescribing persons, other than the District Collector as the authorised officers, is wholly impermissible as the said Government Orders not being in consonance with Rules, 2011, cannot be allowed to survive. In other words, it is the submission of the learned senior counsel that Rules, 2011 will prevail over the Government Orders. It is the further submission of the learned senior counsel that the power to seize minerals, vehicles, etc., conferred on the police personnel by virtue of G.O. Ms. No.114 loses its sheen on and from the coming into force of the Rules, 2011.

13. It is the further submission of the learned senior counsel that the *'Authorised Officer'* defined under Rules, 2011 is not in any way contrary to the authorised officer provided under Section 21 (4) of the MMDR Act and, therefore, there is no necessity to read down the above provision in Rules,

2011 to be made applicable in consonance with Section 21 (4) of the MMDR Act.

14. In this regard, it is the submission of the learned senior counsel that there is no conflict between Section 21 (4) of the MMDR Act and the definitions provided under Rule 2 (ii) of Rules, 2011. Further, the usage in Section 21 (4) is *"an officer"*, and a plain meaning given to the same would only denote that it is only a solitary authority, who could be granted power to seize a vehicle. The rule being unambiguous and is in consonance with Section 21 (4) of the MMDR Act, there is no necessity of reading down the said provision by applying the Doctrine of Reading Down.

15. It is the further submission of the learned senior counsel that the words *"such other officer"* which has been used following the District Collector under Rule 2 (ii) of Rules, 2011, would have to be read *ejusdem generis* with the words before. Proceeding upon the said interpretation, it is the submission of the learned senior counsel that the Legislature, in its wisdom, has used the words *"such other officer"* immediately preceding the words

"District Collector" and, therefore, the police personnel cannot be brought within the ambit of authorised officer empowered u/s 21 (4) of the MMDR Act, as the Rules, 2011, clearly mandate only the District Collector as the authorised officer and in addition it could only be the officials of the Revenue and no other officer as the usage of the terminology *'such other officer'* immediately succeeding the District Collector would only mean the administration officials and it cannot be the law enforcing officials.

16. It is the further submission of the learned senior counsel merely because cognizance of offence has been provided for u/s 21 (6), the same cannot be imported to colour the offence u/s 21 (4) so as to make the police personnel an authorised officer u/s 21 (4). Though the cognizance of an offence would attract the provisions of the Code of Criminal Procedure, more especially Section 102, however, the mere general power vested by the Code of Criminal Procedure on a police officer to deal with an offence cannot be the basis to clothe the police personnel with power of the authorised officer as it would be against Rule 2 (ii) of Rules, 2011.

17. It is the further submission of the learned senior counsel that merely because the offence u/s 21 (4) has been made cognizable u/s 21 (6), it would not vest the police with power to seize the minerals and vehicles as the said authorisation is beyond the ambit of Rules, 2011. The reference before the Full Bench is only to the limited extent of whether the police personnel could be brought within the ambit of an authorised officer empowered u/s 21 (4) of the MMDR Act and not with reference to the power of the police u/s 102 Cr.P.C. vis-a-vis Section 21 (4) of the MMDR Act.

18. It is the further submission of the learned senior counsel that it is true that there is no specific exclusion of police personnel to seize under the MMDR Act, but equally so, there is no specific inclusion of the police personnel within the framework of the MMDR Act. In this backdrop, it is the submission of the learned senior counsel that the exclusion may be either express or implied and when there is an implied exclusion by means of a special provision, the necessary inference that should be drawn is only an exclusion by implication.

19. It is the further submission of the learned senior counsel that the general power of the police personnel to seize provided u/s 102 Cr.P.C. is impliedly excluded under Section 21 of the MMDR Act. In this regard, learned senior counsel drew the attention of this Court to the construction and usage of the expression in Section 21 (4), which provides that *whenever any person raises, transports or causes to be raised or transported without any lawful anthority, any mineral from any land, and for that purpose uses any tool, equipment, vehicle or any other thing, shall be liable to be seized by an officer or authority specially empowered in this behalf.*

20. It is the submission of the learned senior counsel that the coinage of the words *"specially empowered in this behalf"* used in Section 21 (4) makes it clear that it is only the person, who is empowered alone can seize. Such being the case, the general power available to the police personnel u/s 102 Cr.P.C. would stand excluded by implication and, therefore, the inclusion of the police personnel as an authorised officer vide G.O. Ms. No.170 is wholly erroneous and is against Rule 2 (ii) of Rules, 2011. It is the further submission of the learned senior counsel that the term *"specially empowered in this*

behalf" has not been considered either by this Court or the Supreme Court and non-consideration of a fact or a legal issue is *per incuriam* and it will not stand in the way of the Full Bench to deliberate on the said issue. It is therefore the submission of the learned senior counsel that the term *"specially empowered in this behalf"* has to be considered by this Court in the light of Rule 2 (ii) of Rules, 2011.

21. It is the further submission of the learned senior counsel that seizure is an act to be done only after a finding of contravention of an offence is made out. Such being the case, the authority, who grants lease being the District Collector, would alone be the appropriate authority to find out illegal mining or illegal transportation of mined minerals, in contravention of the licence and that being the case, seizure can be effected only by the District Collector. The said proposition would satisfy not only Section 21 (4) of MMDR Act, but would also fulfil the mandate under Rule 2 (ii) of Rules, 2011. Therefore, seizure cannot be given to the police personnel, as the said authority would not be in a position to find out the contravention, as the said

authority is not in the thick of things to know about the nuances of the permission/licence granted for mining.

22. It is the further submission of the learned senior counsel that the power of the police officer u/s 23-A to compound an offence would wholly be unjustifiable and merely because the police personnel is an officer authorised u/s 22 of the MMDR Act shall not be taken as a premium to confer power on the police personnel to compound the offence u/s 23-A of the MMDR Act. The police personnel, as aforesaid, not being aware of the mineral mined or the licence granted for mining the mineral, it would not be within the knowledge of the police personnel to find out the illegal mining and, therefore, clothing the power on the police personnel would be arbitrary and unreasonable.

23. It is the further submission of the learned senior counsel that the prosecution under the MMDR Act is on a private complaint to be made before the court, upon which cognizance could be taken and the said complaint has to be made in writing by the person authorised in this behalf by the Central or

the State Government. The fact that the whole cognizance is on the basis of a private complaint, there arises no necessity for investigation by the police or filing of a report for taking cognizance of the offence, as the police personnel can always invoke the provisions of the IPC for registering the FIR and, therefore, there is no necessity to confer any authority on the police personnel to be an officer authorised to give a complaint u/s 22 of the MMDR Act.

24. It is the further submission of the learned senior counsel that Section 2 (iv) of Rules, 2011 defines the competent authority as a person who is authorised as a person by the Central or State Government u/s 22 of the MMDR Act. It is the submission of the learned senior counsel that the Revenue Divisional Officers, the District Forest Officers and Police Personnel not below the rank of the Inspector of Police have been authorised to make complaint u/s 22 of the MMDR Act by virtue of G.O. Ms. No.4, Industries Department dated 2.1.1998, G.O. Ms. No.67, Industries Department dated 16.6.1994 and G.O. Ms. No.12, Industries Department dated 2.2.2009. In

effect, there are multiple officers, who have been authorised to give a private complaint u/s 22.

25. Reading the aforesaid Government Orders in tandem with Section 22, it is the submission of the learned senior counsel that for the purpose of making the seizure and, thereafter, the private complaint, the person effecting the same should know the nuances in the grant of permission and value of the mined minerals and the acquaintance with the provisions of the various enactments governing the mining of minerals. The District Collector alone being empowered u/s 2 (ii) of Rules, 2011, the legality of the mining activity and the value of the minerals could be assessed for the purpose of fixing the compensation payable at the time of compounding the offence u/s 23-A of the MMDR Act only by the Revenue Officials, who alone could be said to be falling with the term "o*r such other officers"* found in Rule 2 (ii) of Rules, 2011 and, therefore, clothing the police personnel with the power to prefer a private complaint u/s 22 and compound the offence u/s 23-A by issuance of Government Orders would be wholly against the intent and purport of Rules,

2011 and this reflects the non-application of mind with which the Government Orders have been issued.

26. It is the further submission of the learned senior counsel that once the police personnel is held to be not competent to be brought within the fold as an officer authorised for seizure u/s 21 (4) of the Act, the seizures made by the police personnel are bad and illegal and, therefore, the second question of reference is wholly academic once an answer in the negative is given to question No.1.

27. In respect of the third question under reference, it is the submission of the learned senior counsel that the police officer, who also is empowered to be an authority authorised u/s 21 (4) and 22 of the MMDR Act, could very well file an FIR for the offence under the Indian Penal Code. However, the said police officer cannot proceed against the petitioner by filing an FIR under the MMDR Act, as the prosecution under the MMDR Act is only upon a private complaint. In such a scenario, the police officer, who registers the offence could very well compound the offence u/s 23-A of the MMDR Act, provided

the said authority filed a private complaint, in and by which the person would be released from the clutches of prosecution in respect of the offence under MMDR Act, but could very well proceed against the person for the offence under the Indian Penal Code. However, it is the submission of the learned senior counsel that for the submissions aforestated, the police officer cannot be brought within the ambit of an authorised officer to file a complaint for the offence under MMDR Act and, therefore, the compounding of the offence under Section 23-A of the MMDR Act cannot be done by the police officer.

28. With regard to the fourth issue referred for opinion, it is the submission of the learned senior counsel that authorising two different individuals, one to seize the vehicle and another to initiate a private complaint would complicate the issue and it is always reasonable that the District Collector, who is the officer entitled to file a private complaint under Rule 2 (ii) of Rules, 2011, would be the appropriate authority and, therefore, the officials of the Revenue alone would be the officers to file the private complaint as well as compound the offence.

29. Insofar as the last of the issue as to the entitlement of the Special Court to try the offence under the MMDR Act can power of compounding be given to an authorised officer or such a power should only be exercised by the Special Court, it is the submission of the learned senior counsel that in respect of compounding of an offence, it is between the prosecutor/complainant and the offender and it is not for the Special Court to enter into the realm of compounding and the power of the Court is only with regard to adjudication and not with regard to compounding of an offence. In such a scenario, the power of compounding cannot be given to the Special Court and it should always be with the complainant/officer authorised to compound the offence.

30. In fine, it is the submission of the learned senior counsel that when the Rules, 2011 governs the field, in which the District Collector is defined as the authorised officer, the said authority would alone be the authority authorised u/s 21 (4) of the MMDR Act, the G.O. Ms. No.114 dated 18.9.2006 authorising the Inspector of Police as an officer authorised to effect seizure cannot prevail and would be subservient to Rules, 2011. In consequence thereof, the power vested on the police personnel to file a private complaint

u/s 22 and the right to compound the offence u/s 23-A of the MMDR Act is wholly arbitrary, perverse and illegal.

31. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

i) *Arun Kumar &Ors. – Vs – Union of India &Ors. (C.A. No. 3270 of 2003 – Dated 15.09.2006);*

ii) *The Commissioner of Karaikudi Municipality – Vs – V.Asokan (2005 WLR 30).*

32. Mr. B.Vijay, learned Amicus, appointed to assist the Court, at the outset, submitted that all along, prior to the decision of this Court in *Muthu case,* which was the lead case, in which the Division Bench of this Court, while lamenting the state of destruction caused to the environment, passed a series of directions. The primordial issue, which was under consideration of the Division Bench was as to whether Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, (for short 'Rules, 1959') still holds the field in the wake of amendment made to Section 21 of the MMDR Act. It is the submission of the Amicus that initially, in the writ petition, the Bench had

come to the view that after the introduction of Section 21 in MMDR Act, Rule 36-A had lost its significance.

33. Elaborating upon the same, it is submitted by the learned Amicus that the Bench was of the considered view that power of compounding cannot be exercised by the authorised officers and that such power could be exercised only by the Courts and that the officials/authorities have no power to release the vehicles which were seized in the course of commission of the offence. It was pointed out by the learned Amicus that G.O. Ms. No.114 dated 18.9.2006 issued conferring authority on the police personnel not below the rank of Inspector of Police to seize the vehicle u/s 21 (4) of the MMDR Act was not brought to the knowledge of the Division Bench which led to the finding that the authority authorised was only the Revenue officials and, therefore, a direction was issued to the revenue officials to make a complaint to the jurisdictional court within a period of one week from the date of seizure.

34. It is therefore the submission of the learned Amicus that the finding of the Reference Court with regard to the recognition of the Revenue Officials

as the Authorised Officer to effect seizure and file private complaint, as held in *Muthu case,* is on the assumption that power was conferred only on the Revenue Officials and not on any other officials to effect seizure of the vehicle u/s 21 (4) and to file a private complaint u/s 22 of the MMDR Act.

35. Learned Amicus, placing reliance upon G.O. Ms. No.114 dated 18.9.2006 submitted that as early as in the year 2006, the Government had conferred powers u/s 21 (4) of the MMDR Act on the police personnel not below the rank of Inspectors of Police for seizing the vehicle. In continuation thereof, the State Government, vide G.O. Ms. No.170 dated 5.8.2020 had reiterated the conferment of powers on the police personnel. G.O. Ms. No. 114 having not been deliberated upon by the Division Bench in *Muthu case* and the said Government Order having been allowed to occupy the field, the further Government Order in G.O. Ms. No.170 is well within the powers of the State and the conferment of the powers of the authorised officer, as mandated u/s 21 (4) on the police personnel not below the rank of Inspectors of Police cannot be said to be illegal, perverse, arbitrary and not in consonance with the MMDR Act. It is also the further submission of the

learned Amicus that the legality of G.O. Ms. No.114 dated 18.9.2006 has not been put to test till date and, therefore, it is deemed to have attained the status of implied acceptance.

36. Learned Amicus, placing reliance upon Section 21 (4) of the MMDR Act, further submitted that the MMDR Act puts no embargo on the State Government to clothe any officer with the power of seizure and the authorisation by the Government is traceable to its rule making power u/s 15 r/w 23 (C) of the MMDR Act. It is the further submission of the learned Amicus that the authority or officer so empowered could seize the tool, equipment, vehicle or any other thing in addition to the mineral. Section 21 (4) of the MMDR having vested power on the State Government to clothe an officer or authority with power of seizure, the Government Order in G.O. Ms. No.114 dated 18.9.2006, which has been reiterated in G.O. Ms. No.170 dated 5.8.2020 cannot be said to be suffering the vice of illegality in view of the enactment of Rules, 2011 as the power of seizure clothed on an authority is in-built in Section 21 (4) itself and no Rules can supplant the Act.

37. It is the further submission of the learned Amicus that the Government orders in G.O.(Ms) No. 114 & G.O.(Ms) No. 12 were not brought to the knowledge of the Division Bench in *Muthu case* and *order under Reference*. The Division Bench has proceeded on the basis that the Government has conferred power of seizure only to the Revenue Officials and not to the Police Personnel.

38. Taking this Court through the Order of Reference, learned Amicus submits that the apprehension entertained by the Reference Court with regard to bringing the police officer within the ambit of *'authorised officer'* u/s 21 (4) would clothe the police personnel with the power of seizure as well as compounding the offence, whereby the same officer cannot deal with the offence under the Indian Penal Code. In this regard, particular emphasis is made to the finding recorded by the Reference Court, which is as under :-

> *"19. If the police officer is brought within the ambit of an authorised officer, yet another anomalous situation will arise. If the FIR registered by the police officer covers both the IPC offence as well as the offence under the Act, insofar as the IPC offence is concerned, the police officer cannot compound the offence. However, the same police officer can compound the*

offence under the Act. We are not sure as to whether such a power can be exercised by the police officer and if so, it can have adverse consequences."

39. It is the submission of the learned Amicus that the power of the police personnel with regard to seizure had been looked into and approved by a coordinate Bench in ***Sengole &Ors. – Vs – State &Ors. (MANU/TN/0011/2012).*** However, the said dictum in *Sengole case* was neither brought to the notice of the Division Bench nor the aforesaid Government Orders, which had resultantly led to the Bench holding otherwise. It is the further submission of the learned Amicus that the State Government has consciously delegated the power of seizure under Section 21(4) of the MMDR Act to the police personnel as also to the revenue officials.

40. It is the further submission of the learned Amicus that the phrase *"an officer or authority specifically empowered in this behalf"* found in Section 21 (4) would very well include a police officer as well. MMDR Act neither defines the word *"authorised officer"* nor the Rules made thereunder excludes or restricts the role of a police official in the seizure of the vehicle involved in

the offence. It is the further submission of the learned Amicus that the inclusion of the police officer by implied recognition would be very much evident from the insertion of sub-section (6) to Section 21, by which an offence under sub-section (1) to Section 21 is made cognizable. The cognizability of the offence would necessarily bring within its fold a police personnel to be an authorised officer by invocation of Section 102 of the Code of Criminal Procedure and there is no ouster of the power of the police to seize a vehicle in the special enactment, viz., the MMDR Act.

41. In this regard, learned Amicus submitted that the State of Kerala and State of Karnataka have delegated the power of seizure u/s 21 and to file a private complaint u/s 22 to the competent court on the police official, which act has been affirmed by the Supreme Court in the case of ***Pradeep S Wodeyar – Vs – State of Karnataka (MANU/SC/1158/2021)*** and also the Full Bench decision of the Kerela High Court in ***Prakash Nayak – Vs – The District Collector, Kasaragod (MANU/KE/1573/2016)***.

42. It is the further submission of the learned Amicus that Section 22 of the MMDR Act also confers power on the State or the Central Government to authorise a person to file a complaint in writing. This clearly shows that it is within the domain of the State or the Central Government to authorise the authority to file complaint and there is no specific exclusion of a police officer from the said purview.

43. In this regard, it is the submission of the learned Amicus that the Division Bench in *Muthu case* had not specifically laid down any proposition that revenue officials alone are entitled to exercise the power of seizure or to file private complaint to the competent Court. The Division Bench being oblivious of the issuance of G.O. Ms. No.114 dated 28.9.2006, as a sequitur, the inclusion of police personnel within the ambit of authorised officer under Sections 21, 22 and 23-A of the MMDR Act cannot be said to be illegal or contrary to law. As a consequence thereof, G.O. Ms. No.170 issued by the State authorising the police official to exercise powers u/s 21 (4) of the Act, which is in tune with the ratio laid down by the Division Bench in *Muthu case* also does not suffer from the vice of illegality or infirmity.

44. It is the further submission of the learned Amicus that the power of the police official to file a private complaint before the Special Court by virtue of the notification issued under G.O. Ms. No.114 dated 18.9.2006 has not been disturbed by the Division Bench in *Sengole case*, and in the absence of any challenge to the said Government Order and the said order stands till date, which has been absorbed in G.O. Ms. No.170 dated 5.8.2020, the powers of the police to file private complaint u/s 22 of the MMDR Act cannot be said to be illegal. Therefore, to the said extent there is no infirmity with regard to G.O. Ms. No.170 dated 5.8.2020 and the seizure done by the police official in consequence of the aforesaid Government Order cannot be said to be vitiated.

45. Laying further emphasis on the decisions in *Muthu case* and also placing reliance on the decision of the Apex Court in ***Jayant & Ors. – Vs – State of M.P. (2021 (2) SCC 670)***, learned Amicus submitted that the power of compounding conferred on the police officials cannot be said to be illegal, as in *Muthu case* the Division Bench has cautioned that the power of

compounding cannot be resorted to by the authorised official as a collecting agent and that going one step further, the Supreme Court in *Jayant case* has lamented the act of compounding of the offences u/s 23-A by the authorities under the MMDR Act, is in detriment to the environment and in effect causing grave environmental degradation and, therefore, stringent provisions to stop illicit mining should be brought in the MMDR Act so that indiscriminate compounding of the offence done by the authorities empowered in this behalf does not in any way erode the wealth of the Nation and protection is provided to Mother Earth.

46. In such a backdrop, adverting to the third question in reference, relating to the registration of an FIR by a police officer for an offence under the IPC and who happens to be the authorised officer, even in respect of an offence under the MMDR Act, it is the submission of the learned Amicus that the authority, who is empowered to compound the offence under the MMDR Act could very well proceed with the prosecution for the offence under the IPC. In this regard, pointing out to *Jayant case* and *Muthu case*, it is the submission of the learned Amicus that the authority, who is empowered to

compound the offence, though could be a police officer, who happens to be the authorised officer, but in all fairness to the exchequer, it would be just and reasonable that an authority of the Geological Department, who is well aware of the importance and the valuable nature of the mineral and also well versed in the computation of the fine, realty and other fees may be infested with the power to compound the offence, which alone would be in the interest of the State. In sum and substance, it is the submission of the learned Amicus, that it would not be in the fitness of things to give the power of compounding solely to the police officer as the nuances in respect of the mineral and calculation of penalty and other fees would not be within the knowledge of the police personnel.

47. It is the further submission of the learned Amicus that the mechanism for imposition of penalty, provided for u/s 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 is not being followed and this results in frustrating the aforesaid provision, as the penalties, which requires to be levied, are not levied and only the minimum penalty of Rs.25,000/- is levied without taking into consideration the value of the mineral and the illegality

perpetrated by the individual. It is therefore the submission of the learned Amicus that the officers, who are authorised to compound the offence should be read down in such a manner by this Court so that the fruits of Rule 36-A in infliction of penalty on the offender is fully realised.

48. It is the further submission of the learned Amicus that insofar as the offence u/s 379 IPC is concerned, which runs along with the offence under the MMDR Act, irrespective of the compounding of the offence u/s 23-A of the MMDR Act, the offence u/s 379 IPC would subsist and the mere compounding of the offence u/s 23-A of the MMDR Act would not confer any benefit on the offender to have the vehicle released and it is for the Court, which takes cognizance of the case to decide about the release of the vehicle and it is not within the domain of the authorised authority, compounding the offence to release the vehicle. It is the submission of the learned Amicus that the compounding of the offence u/s 23-A would only release the offender from the clutches of further prosecution u/s 21 (4) of the MMDR Act and it would not be a bar to proceed either against the offender under the provisions of the

Indian Penal Code or for that matter against the vehicle under the provisions of the MMDR Act.

49. It is the further submission of the learned Amicus that insofar as reference No.4 is concerned, whether the officer, who seizes the vehicle u/s 21 (4) alone can initiate a private complaint u/s 22 of the MMDR Act or a different officer can be appointed for initiation of criminal proceedings, reliance is placed on the decision of the Constitution Bench of the Apex Court in ***Mukesh Singh – Vs – State (Narcotic Branch of Delhi) (2020 (1) SCC 120)***, wherein the issue of bias on the part of the officer, who is the informant and also the investigator, in which the Supreme Court held that it is to be decided on case-to-case basis and universal generalisation cannot be made as solely based on apprehension or doubts as the entire prosecution version cannot be discarded. Such being the case, learned Amicus submits that there is no necessity for a different officer to be appointed for the purpose of initiation of criminal proceedings and the very same officer, who seizes the vehicle can initiate a private complaint u/s 22 of the MMDR Act as the question of bias would not survive as a general rule.

50. Learned Amicus also drew the attention of this Court to the decision in ***Arumugam – Vs - State (Crl.R.C.No.862 of 2020)***, wherein the learned single Judge has held that the Government Orders not in tune with the directions issued in *Muthu case*, the said Government Orders cannot be acted upon, which is wholly erroneous, as in *Muthu case,* the Division Bench has not passed any affirmative direction with regard to the inclusion of police personnel as bad, but in fact the said Government Orders were not at all under the consideration of the Division Bench and even the said Government Orders were not placed before the Division Bench for deliberation. Therefore, learned Amicus earnestly pleaded that this Court may pass directions so that the said decision may not be relied as a precedent, as it does not portray the correct position of law.

51. Learned Amicus further submitted that due to the ambiguity with regard to the prosecution that is to be taken up with regard to the offence registered under IPC by means of an FIR by the police authorities and in parallel by means of a private complaint under the MMDR Act, neither of the

prosecution, viz., the offence under IPC and the offence under the MMDR Act have seen the light of the day and thousands of cases are pending filing of charge sheet by the police authorities and insofar as private complaint is concerned, committal is yet to be made by the concerned Magistrates and also there is an ambiguity with regard to cognizance being taken on the said cases.

52. In this backdrop, it is the submission of the learned Amicus that this Court in *Muthu case* and the Apex Court in *Jayant case* has clearly held that where an FIR is registered by the police authorities, the charge sheet be filed before the Magistrate Court and the Magistrates may be directed to commit the case to the Special Court and the Special Court before whom a private complaint is filed for the very same offence under the MMDR Act, by the person authorised, shall take up both the cases registered under IPC and also the private complaint under the MMDR Act for joint trial not only in the interest of justice, but also for speedy adjudication of the issue. Therefore, this Court may accordingly, direct the police officers, who have filed FIR to file charge sheet forthwith before the Magistrate Court and the Magistrate

concerned may be directed to commit the case to the Special Court and the Special Court may be directed to take up both the matters jointly and dispose of the cases as expeditiously as possible.

53. Enlarging on the submissions of Mr.Vijay, Mr.Ananthapadmanabhan, learned Amicus also submitted that the construction of Section 23 clearly denotes that police authority cannot be brought within the ambit of an authorised officer u/s 23 of the MMDR Act. In this regard, learned Amicus, relying on G.O. Ms. No.170, submitted that the said Government Order not having empowered the police officer to be an authority to compound the offence, the police officer cannot be an authority who is empowered to compound the offence u/s 23 of the MMDR Act.

54. It is the further submission of the learned Amicus that insofar as the power of the police to seize a vehicle is concerned, there is no necessity for conferment of any power vide a Government Order, as the amendment by way of sub-section (6) to Section 21 of the MMDR Act in and by which the offence u/s 21 is made cognizable, the police authority derives automatic

power to seize the vehicle in view of Section 102 of the Code of Criminal Procedure. Even in the absence of conferment of power u/s 21 (4), the police authority derives automatic power of seizure and, therefore, any seizure effected by the police authority cannot be held to be illegal or vitiated.

55. It is the further submission of the learned Amicus that the power of compounding of offence is only with the parties and the Court cannot compound the offence u/s 23.-A of the MMDR Act. In this regard, learned Amicus, drawing the attention of this Court to Section 23-A submits that there is a clear mandate u/s 23-A that the offence can be compounded only by the person authorised and in such a scenario, the Court is divested of any power to compound. More so, it is the submission of the learned Amicus that the power of compounding is never with the Court even with regard to any other matter and always the power would be with the parties, upon compounding, the approval of the Court alone is given.

56.Learned Addl. Advocate General appearing for the respondent/State submitted that the State, by virtue of the Rule making power provided u/s 15

of the MMDR Act has framed the Rules, which has been given effect to, which resulted in the issuance of G.O. Ms. No.170. It is the further submission of the learned Addl. Advocate General that G.O. Ms. No.170 is in compliance with the delegation of powers as provided for u/s 26 of the MMDR Act.

57. It is the further submission of the learned Addl. Advocate General that the delegation of power provided for u/s 26, the State Government had delegated its authority to be exercisable by the District Collector under Rule 36-A of the Rules. In this backdrop, it is the submission of the learned Addl. Advocate General that the power to compound, which has been delegated on the District Collector, has been subdelegated by virtue of proviso to Rule 36-A (1) and, therefore, no other authority, other than the Revenue Divisional Officer would be entitled to compound the offence.

58. It is the further submission of the learned Addl. Advocate General that even respect of the fine and other levies, which can be levied for the purpose of compounding, Rule 36-A has clearly prescribes the minimum fees for compounding the offence and any other penalty over and above the said

amount cannot be levied by the authorised authority without assigning proper reasons and, therefore, no levy beyond the statutorily prescribed amount could be levied by the officer authorised for the purpose of compounding the offence.

59. It is the further submission of the learned Addl. Advocate General that the police personnel not aware of the type of minerals and does not carry within them the knowledge with regard to the legal provisions for the purpose of compounding the offence u/s 23-A cannot be invested the powers of compounding the offence, which would not be in the interest of either the offender or the State.

60. In fine, it is the submission of the learned Addl. Advocate General that while the police personnel could be empowered as one of the authority for the purpose of seizure of the vehicle and for giving a private complaint, however, for the purpose of compounding of the offence, the police personnel cannot be an authority authorised to compound the offence and to that extent, this Court has to read down the provision u/s 23-A.

61. This Court gave its undivided and concentrated attention to the submissions advanced by the learned counsel appearing on either side and also the submissions advanced by the learned Amicus appointed by this Court and also perused the materials available on record as also the decisions, which have been relied on by the parties in particular reference to the provisions of law, which have a bearing on this case of which the reference has been necessitated.

62. To embark upon answering the issues under reference, it is necessary for this Court, at the threshold, to refer to the various provisions of law under the MMDR Act, the Rules, 1959 and Rules, 2011, and also the Government Orders, which have culminated upon the various orders passed on the subject issue by this Court as also by the Apex Court, which have a bearing in deciding the issues.

63. Section 4 of the MMDR Act relates to undertaking of prospecting or mining operations, which prescribes as under :-

*"**4. Prospecting or mining operations to be under license or lease. –** (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder :*

* * * * * * * *

(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act and the rules made thereunder.

* * * * * * * *"

64. The Rule making power of the State Government to achieve the purpose of enactment of the Act is provided for u/s 15, which is as under :-

*"**15. Power of State Governments to make rules in respect of minor minerals.-***

(1)The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1-A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

b. the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

c. the matters which may be considered where applications in respect of the same land are received within the same day;

d. the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

e. the procedure for obtaining quarry leases, mining leases or other mineral concessions;

f. the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating tomining operations;

g. the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

h. the manner in which the rights or third parties may be protected(whether by way of payment or compensation or otherwise) in case where any such party is prejudicially affected by reason of any prospecting or mining operations;

i. the manner in which the rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

j. the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concessions may be transferred;

k. the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes or any land comprised in a quarry or mining lease or other mineral concessions;

l. the form of registers to be maintained under this Act;

m. the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

n. the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

o. any other matter which is to be, or may be prescribed.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under anyrule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals.

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years."

(Emphasis Supplied)

23-C.Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.-

(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. establishment of check-posts for checking of minerals under transit;

b. establishment of weigh-bridges to measure the quantity of mineral being transported;

c. regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

d. inspection, checking and search of minerals at the place of excavation or storage or during transit;

e. maintenance of registers and forms for the purposes of these rules;

f. the period within which and the authority to which applications for revision ofany order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

g. any other matter which is required to be, or may be, prescribed for the purposeof prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers

or any authority under the rules made under sub-sections (1) and (2).”

65. The whole genesis of the present reference falls squarely upon Section 21 (4) of the MMDR Act, which carries in its marginal note, the heading *“Penalties”* and also Sections 22 and 23-A of the MMDR Act, which pertains to filing of private complaint and also compounding of offences and in the said backdrop, the legality of bringing the police personnel, not below the rank of Inspector of Police also as an officer authorised and empowered to take action u/s 21, 22 and 23-A. For better clarity, the relevant provisions are quoted hereunder :-

> *“**Penalties***
>
> ***21.** [(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.]*
>
> *(2) Any rule made under any provision of this Act any provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with*

both, and in the case of continuing contravention, with an additional fine which may extend to five hundred 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.

(4-A) 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, an offence under sub-section (1) shall be cognizable.

Cognizance of offences

22. *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.*

Compounding of offences

23A. *(1) Any offence punishable under this 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:*

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) 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."

66. Section 26 of the MMDR Act pertains to delegation of powers, which is the basis on which the respective authority is authorised to perform certain tasks and the same is as under :-

*"**Delegation of powers***

***26** (1) The Central Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by –*

(a) Such officer or authority subordinate to the Central Government; or

(b) Such State Government or such officer or authority subordinate to a State Government, as may be specified in the notification.

(2) The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act may confer powers and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any officer or authority subordinate thereto."

67. In exercise of powers conferred u/s 15 of the MMDR Act, the State Government has framed the Tamil Nadu Minor Mineral Concession Rules, 1959. Penalty for contravention of the provisions of the MMDR Act is provided for under Rule 36-A, which has a close nexus with Section 23-A of the MMDR Act, where compounding of offence is prescribed. Rule 36-A takes within its fold the penalties that would be imposable on seizure of the vehicle upon compounding of the offence, to let off the offender alone by the person authorised under Section 22. For better clarity, the relevant provision is quoted hereunder :-

"36-A. Penalties:

(1) 1 [Whenever any person contravenes the provisions of sub-section (1) of section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of 3 [twenty five thousand rupees]3 shall be charged and recovered from that person by the District Collector or the District Forest Officer as the case

may be or in the alternative, he shall liable to be punished as provided in sub-section (1) of section 21 of the Act :

Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this sub-rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.

No machinery hall be used for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or any other authority or Officer, as may be authorised by him in this behalf, who may grant such permission if use of such machinery will not be detrimental to ecology.

3. Whenever any person raises without any lawful authority any mineral from any land, the District Collector or the District Forest officer, as the case may be, 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, area assessment, seigniorage fee or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority. Provided that in respect of minor minerals namely, building and road construction stones

including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this subrule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]

(4) Whenever any person contravenes the provisions of sub-rule (1) of rule 10 and in unlawful possession of any land the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer, as the case maybe, shall, after giving notice, charge and recover from that person double the rate of the lease amount where the area was held under lease through public auction or its renewal or tender or double the total seigniorage fee where the area was held under lease through any other provisions of these rules, or in the alternative, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention, with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt,

brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this subrule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.

(5) Whenever any person contravenes any provisions, other than sub-rule (1) of rule 10 of these rules or conditions of a quarrying permit or quarrying lease granted under these rules the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer as the case may be, shall after giving notice, charge that person and recover from him enhanced seigniorage fee up to a maximum of fifteen times the normal rate subject to a minimum of [twenty five thousand rupees] or in the alternative he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and

dischargeable by the District Collectors under this subrule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.

(6) No machinery shall be used for quarrying sand from river beds.

68. With the provisions of law ingrained in the MMDR Act coupled with the Rules which have been framed in exercise of the powers conferred u/s 14 and 23-C of the MMDR Act, this Court would now proceed to analyse the issues, which have been referred to this Bench.

REFERENCE ISSUE NO.1

Whether a police personnel can be brought within the ambit of "authorised officer empowered" under Sections 21(4), 22 and 23-A of the Act?

69. The first issue of reference revolves around whether the police personnel can be vested with authority and be brought within the ambit of *"authorised officer empowered"* under Sections 21 (4), 22 and 23-A of the MMDR Act.

70. There is no quarrel with the fact that Section 15 empowers the State to frame Rules with regard to keeping a tab on the mining activity in respect of the minerals, which falls within the domain of the State.

71. In exercise of the said power, the State Government, vide G.O. Ms. No.114, Industries (MMC-1) Department dated 18.9.2006, in the wake of large scale destruction of environment on account of rampant mining and the difficulties faced by the revenue officials and the officials of the Geological Department in apprehending the offenders, who illegally mine minerals in scant regard to the environment, considering the fact that the culprits overpower the officials, who have been empowered to seize the vehicle carrying the illegally mined mineral, which results in the officials being at the receiving end physically, with a view to strengthen the regulation of mineral administration, felt it necessary to bring the personnel of the police department within the ambit of authority empowered to seize the vehicles. In such a backdrop, the State Government, in exercise of its powers u/s 15 of the

MMDR Act, the aforesaid Government Order has been issued and the relevant portion of the Government Order is extracted hereunder :-

> *"3. When the officials empowered under the provisions of Mines and Minerals (Development and Regulation) Act, 1957, tried to apprehend the culprits, the officials were at the receiving end physically, i.e., they were driven out forcefully and sometimes even they have lost their lives. In order to strengthen the regulation of mineral administration, it is felt necessary that the personnel of the Police Department may also be empowered under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 so that they can also exercise the powers under the provisions of this Act and seize the vehicles involved in such illicit activities and also to curb the illicit transportation of minerals, particularly common use minor mineral sand.*
>
> *4. After careful considerations the Government have decided to issue necessary notification under the provisions of Mines and Minerals (Development and Regulation) Act, 1957, to include the personnel of the Police Department not below in rank of Inspector of Police so as to enable them to exercise the provisions of Sub-section (4) of Section 21 of Mines and Minerals (Development and Regulation) Act, 1957. (Central Act 67 of 1957). Accordingly, the Draft Notification has been appended."*

72. Thereafter, vide G.O. Ms. No.12, Industries (MMC-1) Department, dated 2.2.2009, the Government, authorised the District Forest Officers and Police Personnel not below the rank of Inspector of Police to exercise the power u/s 22 of the MMDR Act to make complaint in writing to the Court of competent jurisdiction for any offence punishable under the MMDR Act or any rules made thereunder.

73. Pursuant to writ petition in W.P. No.9860/2008 filed before this Court, directions were issued to the Government to issue circular to prevent illegal quarrying in the State and to form a Special Cell at District level to review the matter on monthly basis and further direction was issued to fix the responsibility on various lower level functionaries. In compliance of the aforesaid directions, G.O. Ms. No.135, Industries (MMA-1) Dept. dated13.11.2009 was issued constituting Task Force at District and Taluk level.

74. It is to be pointed out that the Government Orders in G.O. Ms. No. 114 and G.O. Ms. No.12 dated 18.09.2006 and 02.02.2009 were not put to test before this Court at any point of time. While the said Government Orders in

G.O. Ms. No.114 and G.O. Ms. No.12 dated 18.09.2006 and 02.02.2009 were occupying the field, a batch of writ petitions in led by W.P. (MD) No. 19936/2017, etc., was filed before the Madurai Bench against rampant illegal sand mining and for a direction to take effective steps to prevent illegal sand mining. Considering the gravity of the situation in the light of the large scale damage that is caused to the environment due to illegal sand mining, the Division Bench, passed the following order :-

> *"9. Section 21 of the Act came into inserted by Act 10 of 2015. Rule 36(A) has been in statute prior to that. This Rule has been introduced in exercise of the power under Section 15 r/w 23-C of the Act. The moment Section 21 has come into being, Rule 36-A lose its significance. In fact, it does not have any existence thereafter. After all, between rule which has been enacted in pursuant to the rule making power and substantive provision of the Act, the later one would certainly prevail, for which, there will not be any quarrel. Therefore, in no case any revenue official can invoke Rule 36-A, for the purpose of release of mineral, tool, machinery, instrument, vehicle etc.,*
>
> *10. Section 23-A of the Act speaks about compounding of offences. This provision has been in existence for quite some time. By implied overruling, this provision also loses its force. When once power of adjudication lies only with the Court,*

there is no way, the revenue officials can compound the same and thereafter, make a complaint to the Court. This is also for the reason that the power of confiscation is also not available to such authority. In other words, seizure is only for the purpose of assuming jurisdiction for making complaint before the jurisdictional Court. Once an authority seizes the vehicle, then, there is no role to be played with respect to the release, which is specifically assigned to the Court alone. Therefore, there is no way a power of compound can be exercised, since the very power of confiscation followed by adjudication itself is not available to an authority, other than the Court.

11. Having come to the aforesaid conclusion, we deem it appropriate to direct all the revenue officials to make a complaint after the seizure to the jurisdictional Court. A complaint has to be made immediately after seizure, preferably, within a period of one week. Thereafter, appropriate application can be made for confiscation, which might include a vehicle, said to have been involved."

75. What is pertinent to be noted from the abovesaid order is the fact that Section 21 had been well in the statute even before the framing of Rule 36-A. However, inadvertently, a wrong finding had emanated from the Division Bench, as if Section 21 had come into the statute book only in the year 2015 and, therefore, on and from the coming into force of Section 21,

Rule 36-A lost its significance. However, what is to be noted is the fact that vide Act 10 of 2015, only an amendment has been made to Section 21, more especially to sub-sections (1) and (2).

76. Pointing out the above factual error in the judgment, Review Application in Rev. Appln. Writ (MD) Nos.80 to 82 of 2019 were filed by the State in which it was the learned Advocate General had made the following submission :-

> *"3. The learned Advocate General appearing for the applicants contended that there is a factual error which has crept in, in holding that Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act, 1957 (for brevity, referred to as "the M&M Act") has come into force by the insertion of Act 10 of 2015 and, therefore, Section 23A of the M&M Act has lost his relevancy. It is only an amendment and hence the finding given is factually incorrect. The applicants have got power under Rule 36-A of the Tamil Nadu Minor and Minerals Concession Rules, 1959. Such a power cannot be taken away. When once compounding takes place, the vehicle is entitled for release. Thus, the order passed requires to be reviewed."*

77. Upon being brought to its knowledge about the error that has crept in, in the order, the Division Bench went on to deal in detail with regard to the amendments made to various Sections of the MMDR Act by the Amending Act 10 of 2015 and on closer introspection, made the following observations :-

> *8. Sections 21(4) and 4A of the M&M Act were also substituted by Act 38 of 1999 with effect from 18.12.1999. For better appreciation, we would also place on record the aforesaid provisions:-*
>
> *"Section 21. Penalties*
>
> *(1) to (3) ******
>
> *(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 of authority specially empowered in this behalf.*
>
> *(4-A) 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."*
>
> *9. **As per these provisions, the power of seizure is certainly available with the officer or authority empowered***

accordingly. Such a seizure would involve the actual mineral, machinery by way of tool and equipment, vehicle or such incidental materials. *As per Section 21(4A) of the M&M Act, such seized materials are liable to be confiscated by an order of Court competent to take cognizance of the offence under Section 21(1) of the M&M Act and the seized materials are to be disposed of in accordance with the directions of such Court. Taking note of the aforesaid provisions, we have held that what is permissible to the Revenue Officials, namely the officer authorized, is only the seizure and not confiscation or disposal of such materials. The said reasoning adopted, in our considered view, does not require any relook, though we respectfully agree with the learned Advocate General that there is a factual error in coming to the conclusion that insertion has taken place only by Act 10 of 2015 which is, in fact, only an amendment. We may note that the Act does not specifically deal with the issue qua release. Once we hold that the power of confiscation lies with the Court alone, the question qua release shall also be decided by it alone. We are dealing with a penal provision in a regulatory statute and therefore the word 'shall' will have to be given the actual meaning. Thus, confiscation is the rule and release is the consequence of an adjudication. The question of release would arise only on the decision as to whether confiscation is required or not.*

(Emphasis Supplied)

78. From the above, the clarification that has emanated from the Bench relates to the fact that the finding of the Division Bench as to the permissibility of the Revenue Officials, namely the officer authorized under the MMDR Act, is only in respect of seizure and not confiscation or disposal of such materials. The Division Bench had gone on to clarify that the power of confiscation and release of the seized materials is only with the court and not with the officer authorised. It is to be put on record that the above view of the Division Bench is not with reference to any Government Order or provisions of the MMDR Act which permits only the Revenue Divisional Officer to be the person authorised to seize the vehicle and lay the private complaint. Further, what has been clearly spelt out by the Division Bench is that the power of seizure is certainly available with the officer or authority empowered accordingly. Therefore, in no uncertain terms, the Division Bench has held that the officer or authority empowered has the power of seizure and no fetters have been placed on the Government with regard to designating the police officials also as authority empowered to effect seizure.

79. Curiously what is to be pointed out here is the fact that neither in the main order in W.P. (MD) No.19936/2017 nor in the Review order in Rev. Appln. Writ (MD) Nos.80 to 82/2019, there is any whisper about the Government Order in G.O. Ms. No.114 and G.O. Ms. No.12, in and by which the State Government had empowered the police personnel, not below the rank of Inspectors of Police of the respective jurisdiction, as an authority empowered to effect seizure and file a private complaint and further G.O. Ms. No.12 had also empowered the District Forest Officer as an authority authorised to file a private complaint before the Court of competent jurisdiction for any contravention of the provisions of the MMDR Act and the Rules.

80. In this backdrop, what is relevant to be pointed out is that the aforesaid Government Orders in G.O. Ms. No.114 and G.O. Ms. No.12 have not been put to challenge before this Court by any of the aggrieved persons at any point of time. The said Government Orders have survived and have been put in action but the Division Bench in *Muthu's case* has not been appraised of the said Government Orders, which is evident from the fact that the said

Government Orders have not been discussed, and this had led the Bench to render a finding that Revenue Officials are empowered to effect seizure as they have been authorised as the authority u/s 21 (4). It is further to be pointed out that in *Muthu's case* there is no affirmative finding rendered by the Bench that it is only the Revenue officials, who are the persons empowered to seize the vehicle and file a complaint. In fact, the basis on which such a finding as to the Revenue officials alone being empowered to seize the vehicle and file a complaint has been arrived at by the Division Bench and the whole order, both in the writ as well as the Review is silent on this aspect.

81. Be that as it may. It is further to be pointed out that in *Muthu's case*, the Division Bench had nowhere held that police personnel cannot be authorised as an authority empowered to effect seizure. The whole of the order in *Muthu's case*, be it the main writ petition or the review application is silent on the said aspect, more particularly with respect empowerment of the person authorised under Section 21 (4). What is pertinent to be pointed out here is that the consequence of the seizure is the crux of the issue in *Muthu*

case and not the seizure, which would be evident from the observation of the Bench, wherein it has been held that *"the Act does not specifically deal with the issue qua release. Once we hold that the power of confiscation lies with the Court alone, the question qua release shall also be decided by it alone".* In effect, what was considered by the Division Bench in *Muthu case* was only with regard to the release of the vehicle and not the power of seizure effected by the person authorised under the MMDR Act.

82. The Reference Bench, while traversing through the order in *Muthu* case was of the view that while the Division Bench in *Muthu case* though has not held that the police personnel are also authorised authority empowered to seize the vehicle u/s 21 (4) of the MMDR Act, however, curiously, the Government Order in G.O. Ms. No.170 dated 5.8.20 had brought the police personnel within the ambit of authorised authority, while the Division Bench had confined the authority only to the revenue officials as the authorised officer, which, according to the Bench is an apparent conflict between the directions issued in *Muthu case* vis-a-vis the Government Orders, which has

even recognized the police personnel, apart from the revenue officials, as authorised person.

83. In the above backdrop, the reference has been necessitated and the reasons which weighed with the Reference Court to arrive at the said conclusion is also premised in the order, the relevant portion of which is extracted hereunder :-

> *"16. The important question that arises for consideration is as to whether the conflict stated supra can be resolved by clarifying the earlier orders passed by this Court. In other words, will it suffice if this Court adds the police personnel also within the fold of authorised officer along with the revenue officials. We do not think that such a clarification can be made straight away by a Coordinate Bench and we assign the following reasons to come to such a conclusion.*
>
> *17. In the entire scheme of the Act, no role has been assigned to a police officer. It is only the District Collector and the revenue officials who are entirely involved at various stages from issuance of mining lease and license, till taking action for violation of the provisions of the Act. That is the reason why the earlier orders passed by the Coordinate Bench was repeatedly referring only to revenue*

officials as the authorised officers who can seize, file private complaint, compound the offence, etc. under the Act. It is for the very same reason that even the police officer was directed to inform the revenue official after the registration of the FIR wherever it also involved offence under the Act. This is in view of the fact that it is the authorised officer/revenue official who is vested with the power to file a complaint under Section 22 of the Act. Such revenue official was also held to have the power to compound the offence under the Act. Only insofar as confiscation and release of vehicle is concerned, the competent Court was held to possess such powers.

18. If the police personnel is also brought within the ambit of an "authorised officer", it would mean that such a police officer can seize the vehicles and will also have the power to compound the offence under the Act. That apart, the same police officer can also file a private complaint under Section 22 of the Act. From the status report filed by the respondents, it is clear that the seizure of vehicles has been done by the police officer and whereas when it came to filing the private complaint, the matter was handed over to the Revenue Divisional Officer and the Revenue Divisional Officer has filed a complaint before the competent Court. Hence, it is clear that even the respondents are not very sure as to how far the power of the police officer can extend.

19. If the police officer is brought within the ambit of an authorised officer, yet another anomalous situation will arise. If the FIR registered by the police officer covers both the IPC offence as well as the offence under the Act, insofar as the IPC offence is concerned, the police officer cannot compound the offence. However, the same police officer can compound the offence under the Act. We are not sure as to whether such a power can be exercised by the police officer and if so, it can have adverse consequences.

20. It is brought to our notice that in majority of the cases, it is the police officer, who registers the FIR, seizes the vehicle and produces the same before the jurisdictional Magistrate Court. Even in this case, Form 91 has been filed only before the Judicial Magistrate No.V, Madurai. This procedure followed by the police officer is in line with Cr.P.C. for the IPC offence. However, such procedure is not correct for the offence under the Act. In every case, after the vehicle is seized, Form 91 is filed before the jurisdictional Magistrate Court. Thereafter, intimation is sent to the revenue official and separate proceedings are initiated for the confiscation of the vehicle. Insofar as the release of vehicle is concerned, applications are entertained only by the Special Court. We find that the seizure of vehicles is not in line with the directions issued by the Division Bench and if the very seizure is held to be

illegal, it will open up a Pandora's box whereby all the earlier seizures and confiscation proceedings will be reopened.

21. In our considered view, we cannot get over this situation by merely clarifying the earlier order. Infact, by clarifying the earlier order, it will only tantamount to reviewing the earlier order passed in the review applications. That apart, there are certain important questions which needs to be answered and we cannot answer those questions as a Coordinate Bench."

(Emphasis Supplied)

84. It is to be pointed out that while attention of the Bench was drawn to G.O. Ms. No.114 dated 18.09.06, in and by which the police personnel, not below the rank of Inspectors of Police was brought within the ambit of the authorised person empowered to seize the vehicle, G.O. Ms. No.12 dated 2.2.09 authorised the police personnel, not below the rank of Inspectors of Police to file a private complaint before the Court of competent jurisdiction with regard to offence punishable under Section 21 (4). In effect, the police personnel, not below the rank of Inspectors of Police of the respective

jurisdiction was authorised to file a private complaint, which in effect empowers the police personnel to act according to the mandate u/s 22 of the MMDR Act.

85. However, it is borne out by record that the basis which formed the reference, as aforesaid, is the contra view of G.O. Ms. No.114 *qua* the order in *Muthu case.* Only in the said backdrop, the Bench had entertained a doubt with regard to the power of the police personnel to seize a vehicle under Section 21 (4), as it was of the view that the police could only file an FIR for the offence under IPC and with regard to the private complaint u/s 22 of the MMDR Act, it was necessary for the police personnel to inform the Revenue officials, who alone could file the private complaint u/s 22 of the MMDR Act. The further discussion of the Bench clearly reveal that the aforesaid fact of empowering the police personnel to file a private complaint is also not properly brought to the knowledge of the police authorities, thereby, on seizure of the vehicle, the act of filing the private complaint is entrusted with the Revenue Divisional Officer.

86. One other aspect on which the Bench doubted the correctness of the compounding power entrusted with the police personnel is that while the police authorities would not be in a position to compound the offence relatable to the IPC offence, however, the very same authority, if permitted to compound the offence under the MMDR Act, the same would lead to an anomalous situation. Pointing out the above inconsistencies, the reference has been premised by the Reference Bench for clarifying the legal position.

87. The relevant provisions of the Act and the Rules, which have a bearing on the issue have already been extracted above. Rule making power is provided for u/s 15 of the MMDR Act and by virtue of the said powers, Rules, 1959 have been framed. The delegation of powers by notification to be issued by the Central and State Government is provided u/s 26 of the MMDR Act. Only by virtue of the above all the Government Orders have been issued delegating the power with regard to seizure, filing of complaint and compounding of offence, etc.

88. Sub-section (1) and (2) of Section 21 relates to the contravention of the provisions of sub-section (1) and (1-A) of Section 4 of the MMDR Act and the penal consequences attached thereto. Likewise, sub-sections (4), (4-A), (5) and (6) are also penal in nature. The construction of sub-section (4) to Section 21 reveals that 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 specifically empowered in this behalf.*

89. Sub-section (4-A) relates to the consequential act of confiscation of the mineral, tool, equipment, vehicle or any other thing seized u/s (4), which can be ordered by a Court competent to take cognizance of the offence under sub-section (1). Therefore, on the question of confiscation, there is no quarrel and, in fact, the decision in *Muthu's case* is clear that confiscation can only be ordered by the Court and not by any other authority. Therefore, no deliberation is required on this aspect.

90. Though the Reference Bench, while referring the above issues, has doubted on the police personnel being brought within the ambit of authorised officer u/s 21 (4), the main ground on which the aforesaid doubt has arisen is due to the act of the police personnel pursuant to seizure. The Bench, placing reliance upon the report filed by the respondents, which has revealed that once the vehicles are seized, private complaint is not being filed by the police personnel, but it is entrusted to the Revenue Divisional Officer to file a private complaint before the competent court. In effect, the act of the police personnel with regard to not filing a private complaint u/s 22 of the MMDR Act, but relegating the issue to the revenue officials, by not invoking the powers provided to the police personnel as authorised person to file the private complaint, is the basis for the reference.

91. However, the fact remains that vide G.O. Ms. No.114 dated 18.9.2006 the State Government has brought the police personnel, not below the rank of Inspectors of Police of the respective jurisdiction, as an authorised officer empowered to effect seizure u/s 21 (4) of the MMDR Act. The said Government Order is still in force and has not been questioned till date. In

this regard, learned Amicus placed before this Court the decision in *Sengole case*, where, upon a reference made, a Division Bench of this Court had deliberated on the following questions :-

> *"1. Whether the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 , will either explicitly or impliedly exclude the provisions of the Indian Penal Code when the act of an accused is an offence both under the Indian Penal Code and under the Provisions of the Mines and Minerals (Development and Regulation) Act, 1957?*
>
> *2. If a case is registered by the police both under the provisions of the Indian Penal Code as well as the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and a final report is submitted, whether it will be lawful for a Magistrate to take cognizance on the said final report?"*
>
> *(Emphasis Supplied)*

92. Adverting to the decisions of various High Courts as also the Apex Court, the Bench went on to answer the reference in the following manner :-

> *"46. In view of the foregoing discussions, we answer the questions referred to us as follows:-*
>
> *(i) Since, the offences under the Indian Penal Code involved in the cases before us and an offence under Section 21 of the*

Mines and Minerals [Development and Regulation] Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals [Development and Regulation] Act will not exclude the provisions of IPC. Therefore, in respect of sand theft, it will be lawful for the police to register a case as provided in Section 154 Cr.P.C., under Section 379 and other relevant provisions of IPC, investigate the same as per the provisions of the Code of Criminal Procedure and to lay a final report under Section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore, such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed.

(ii) If an act of the accused constitutes offences under Indian Penal Code as well as the provisions of the Mines and Minerals [Development and Regulation] Act, the registration of a case both under the provisions of Indian Penal Code and the Mines and Minerals [Development and Regulation] Act is not illegal and the police may proceed with the investigation. ***However, the police shall file a police report only in respect of the offences punishable under the Indian Penal Code and in respect of the offences punishable under the Mines and Minerals [Development and***

Regulation] Act, he may file a separate complaint, provided he has been authorised under Section 22 of the said Act.

(iii) In any event, if the police officer, files a final report in respect of offences under IPC as well as under Section 21 of the Mines and Minerals [Development and Regulation] Act, the Magistrate may take cognizance of the offences under IPC alone and proceed with the trial.

(iv) In respect of offences under the Mines and Minerals [Development and Regulation] Act, the court shall take cognizance only on a complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a police report.

(v) ***In the State of Tamil Nadu, so long as the notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006 authorising the Inspectors of Police to file complaints under Section 22 of the Mines and Minerals Act, is in force , on completing the investigation in respect of the offence under section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a complaint under Section 22 of the Mines and Minerals Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance***.*"*

(Emphasis Supplied)

93. A careful perusal of the aforesaid order in *Sengole case*, it is clear that G.O. Ms. No.12, Industries (MMC-1) Dept., dated 02.02.2009 (however wrongly mentioned in S. No.5 of the finding as G.O. Ms. No.114, Industries (MMC-1) Dept., dated 18.09.2006) is still in force in the State of Tamil Nadu, in and by which Inspectors of Police, have been authorised to file private complaint u/s 22 before the Jurisdictional Magistrate, the said finding having been allowed to stand without it being disturbed in any manner till date, it clearly means that the authority granted to the police personnel, not below the rank of Inspectors of Police by the State to file a private complaint subsists till date.

94. However, before filing the private complaint, comes the act of effecting seizure. In this regard, learned Amicus placed G.O. Ms. No.114, Industries (MMC-1) Department, dated 18.9.2006 to impress upon this Court that vide the said G.O., the police personnel not below the rank of Inspectors of Police have been empowered to effect seizure u/s 21 (4).

95. In *Kanwar Pal Singh case,* theSupreme Court has clearly enunciated the stand *that prosecution and cognizance u/s 21 r/w Section 4 of the MMDR Act will not be valid and justified in the absence of authorisation*. The above decision clearly stipulates that so long as there is an authorisation u/s 21 of the MMDR Act, the authorisation would be valid and the authority so authorised would be entitled to invoke all the powers conferred by the Act and the seizure, if any, made upon conferment of authority, would be valid and does not suffer the vice of any illegality.

96. As stated above, G.O. Ms. No.114 authorises the Inspectors of Police of the respective jurisdiction to be the person authorised and empowered to effect seizure u/s 21 (4) of the MMDR Act. This authorisation granted by the State Government by virtue of powers conferred u/s 15 of the MMDR Act has withstood the test of time and is still subsisting of which there is no quarrel. Such being the case, as is evident from the materials available on record, the only inference that could be drawn is that the police personnel, not below the rank of Inspectors of Police of the respective jurisdiction have

been authorised as the person empowered to effect seizure u/s 21 (4) of the MMDR Act.

97. The petitioner discredits G.O. Ms. No.114 so as to hold that the authority granted to the police personnel is beyond the competence of the State Government is on the ground that it is in violation of Section 2 (ii) of Rules, 2011, as the aforesaid Section 2 (ii) defines the District Collector as the authorised officer and, therefore, no other authority other than the District Collector can be authorised as the authority to effect seizure.

98. Section 2 (ii) of Rules, 2011 defines *"authorised officer"* as under :-

> *"2. .....*
>
> *(ii) "Authorised Officer" means the District Collector of the district concerned or such other officer as may be authorised by the Government."*

99. The definition of *"Authorised Officer"* takes within its fold *"such other officer"*, which could take in the police personnel and other officials, as may be authorised by the State Government to be the authorised officer

empowered u/s 21 (4) of the MMDR Act. However, it is the contention of the learned senior counsel that *"such other officer"* must be read *ejusdem generis* with the words going before it and, therefore, it should be read in continuation of the District Collector and in such a scenario, no other officer below the rank of the District Collector would be entitled to effect a seizure, as it would be against the Rules, 2011.

100. Though such a contention is advanced, which, at first blush, looks attractive, but the same cannot persuade this Court to make such an interpretation for the simple reason that it is the legally accepted framework that the hierarchy of law is that when there is an Act and Rule occupying the same subject matter, it is the Act which would prevail over the Rule. There cannot be any quarrel on this well settled and time-tested proposition.

101. Section 21 (4) of the MMDR Act uses the term *"by an officer or authority specially empowered in this behalf".* The empowerment of an officer by the State Government flows from the rule making power available u/s 15 r/w Section 23 (C) of the MMDR Act. When the Act, in clear and unambiguous

term provides the State Government with the power to empower an particular authority as the authorised officer to effect seizure, the definition of *"Authorised Officer"* u/s 2 (ii) of Rules, 2011 which defines the "*District Collector of the district concerned or such other officer as may be authorised by the Government"* would only go to mean that the term *"such other officer as may be authorised by the Government"* should be read harmoniously with the Act so as to take within its fold all the authorities, who are empowered as the person authorised by the State Government. Any other interpretation of the same would defeat the very purpose of the Act and would render Section 21 (4) *otiose*, as it would be a practical impossibility for the District Collector to go and seize each and every vehicle, which is involved in illegal mining activities.

102. The view above further gets strengthened by the fact that the concept of *ejusdem generis*, pressed into service would only come into play if the conjunction used in Section 2 (ii) is *"and"*. Consciously, the Legislature, while framing the Rules, 2011, has used the word *"or"* to conjunct the District Collector with such other officer as may be authorised, meaning thereby, that

the Government, in the absence of the District Collector, could also authorise any other officer to be the authorised officer u/s 21 (4) for the purpose of effecting seizure.

103. Further, in *Sengole case* an authoritative pronouncement has been made that the police personnel, authorised as the officer u/s 22 of MMDR Act, is empowered to make a private complaint for the offence u/s 21 (4) of the MMDR Act in addition to registering an FIR for IPC offences, which has since been approved by the Supreme Court in the case of *Sanjay* and *Kanwar Pal Singh*, the contention of the petitioner that the police personnel brought with the ambit of *"authorised officer empowered"* u/s 21 (4) of the MMDR Act cannot be said to be either illegal or not in consonance with the MMDR Act.

104. Further, in *Sengole case,* the Division Bench has rendered a definite opinion that the Inspectors of Police can file a complaint u/s 22 of the MMDR Act upon completing the investigation in respect of the offence u/s 21 of the MMDR Act, which has been approved in *Sanjay* and *Kanwar Pal Singh,* which would only establish that there is an implied affirmation by the Bench

with regard to the inclusion of police personnel as an *"officer authorised"* within the ambit of Section 21 (4) of the MMDR Act.

105. The learned senior counsel for the petitioner has raised the issue that the usage of the terminology in Section 21 (4) is *"an officer"* and it could only mean the revenue official alone and no other officer can be brought within the said ambit.

106. However, such a contention does not also impress this Court for the reason that the words used is *"an officer or authority specially empowered"* Had the submission of the petitioner is to be accepted, there would arise no necessity for the Parliament to use the terminology *"an officer or authority".* It could merely have stopped with the usage of words *"an officer"*. The inclusion of the words *"or authority"* would only be read to mean plurality of officers and it is not singular terming it only as Revenue officials. Further, if it is to be only the revenue official, then the words *"an officer"* would alone have sufficed. But on a broader spectrum, the Parliament has dealt with the issue and deliberated that more than one authority would be

required, if the activity is to be monitored properly and only in that backdrop, the words *"or authority"* has been suffixed with the words *"an officer"*. Therefore, the contention of the petitioner that the Parliament has not intended plurality cannot be countenanced.

107. When the State Government, conscious and in exercise of its powers u/s 15 has authorised the police personnel, not below the rank of Inspectors of Police, to be officers to effect seizure u/s 21 (4) of the MMDR Act of any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4) to Section 21 by issuance of G.O. Ms. No.114 dated 18.9.2006 and the said Government Order not having been challenged, then, as aforesaid, it is very much within the purview of the State Government to fasten authority on any person the power of seizure and the said action can neither be called to be beyond the powers of the State Government nor could it be said to be arbitrary and illegal. ***The implied affirmation, having obtained finality without being disturbed in any manner, the necessary inference that could be drawn is that the police personnel empowered under G.O. Ms. No.114 dated 18.9.2006 to be authorised officers u/s 21 (4) of the MMDR Act with***

the power to effect seizure is wholly within the framework of the MMDR Act and the Rules framed thereunder.

108. Insofar as the empowerment of the police personnel as *"authorised officer"* u/s 22 of the MMDR Act for the purpose of filing a private complaint before the Court of competent jurisdiction is concerned, the same stands squarely covered by the decision in *Sengole case* as affirmed in the decisions in *Sanjay and Kanwar Pal Singh.* At the risk of repetition, the finding in *Sengole case* is quoted hereunder :-

> *"46. .....*
>
> *(v) In the State of Tamil Nadu, so long as the notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006 authorising the Inspectors of Police to file complaints under Section 22 of the Mines and Minerals Act, is in force , on completing the investigation in respect of the offence under section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a complaint under Section 22 of the Mines and Minerals Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance."*

109. Further, the aforesaid decision in *Sengole case* finds acceptance in the Full Bench decision of the Kerala High Court in *Prakash Nayak's case* and for better appreciation, the relevant portion of the said order is quoted hereunder :-

> *"28. Competence of the police officer who made seizure in this case, to initiate prosecution under Section 22 of the MMDR Act cannot be questioned or doubted, because there is already a Government order authorising police officers of and above the rank of Sub Inspectors to initiate prosecution under Section 22. If an officer is authorised under the law to initiate prosecution, and if his powers as police officer under the Code of Criminal Procedure including Section 102 of the Code of Criminal Procedure are not specifically ousted or excluded under the special law, and when the offence is specifically made cognizable, the powers and authority of such police officer to make seizure under Sub Section (4) of Section 21 cannot be questioned or challenged. We find that such appointment specifically under Sub Section (4) of Section 21 is required only in the case of other categories of officers than police officers. This position is made clear by the learned Single Judge in Aloshias C. Antony's case (cited supra). The learned Single Judge observed that power to seize must be corollary to the power to make arrest and to bring prosecution. The learned Single Judge also observed that the argument otherwise, that seizure of articles made by an*

officer not empowered to arrest but empowered to bring prosecution under Section 22 of the MMDR Act, will not have effect of a legal seizure, is something difficult to digest. We fully agree with the observations and findings of the learned Single Judge in Aloshias C. Antony's case (cited supra).”

110. In fact, more force is there in the aforesaid decision in *Prakash Nayak’s case* wherein the Full Bench of the Kerala High Court has categorically held that so long as there is no ouster or exclusion of Section 102 of the Code of Criminal Procedure in the special enactment, viz., the MMDR Act and further Section 21 being made specifically cognizable by inclusion of sub-section (6), the powers and authority of the police officer to make a seizure u/s 21 (4) cannot be questioned. The Full Bench has further gone on to hold in unequivocal terms that the appointment of *“authorised officers empowered”* occurring in Section 21 (4) would only be relatable to other categories of officers and so long as the offence is cognizable and there being no specific exclusion or ouster, police authorities would be drawn automatically within the purview of investigation for the offence u/s 21 (4). As a consequence thereof, the power of the police personnel to file a private complaint would also stand preserved and the police personnel can file a private complaint

before the court of competent jurisdiction for the offence u/s 21 (4) of the MMDR Act notwithstanding the fact that a separate proceedings is taken against the offender under the relevant provisions of the Indian Penal Code by registering an FIR. To give a much better impetus to the above finding, the relevant portion of the decision of the Supreme Court in *Sanjay case* is extracted hereunder :-

> *"72. 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 person. In other words, in a case where there is a theft of sand and gravels 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 river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., 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 authorized officer for taking cognizance in respect of violation of various provisions of the MMRD 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."

111. From the said decision in *Sanjay case,* it is clear that there is an implied affirmation by the Supreme Court that the power of the police authority to file a private complaint is not only recognized, but also approved. In the above backdrop of the facts, G.O. Ms. No.170, Industries (MMC.2) Dept., dated 5.8.2020 has come to be issued by the State, in and by which the respective authorities, who are the persons authorised u/s 21 (4), 22 and 23-A have been detailed. ***Therefore, it is evident that the power of the police authorities as "person authorised" u/s 22 of the MMDR Act for filing a***

private complaint upon seizure of a vehicle stands preserved and the Government Order in G.O. Ms. No.12 dated 2.2.2009 is within the legal framework and cannot be said to be beyond jurisdiction.

112. However, insofar as compounding of offence u/s 23-A (1) of the MMDR Act is concerned, it is to be pointed out that the State, insofar as Sections 21 (4) and 22 of the MMDR Act is concerned, has empowered the police personnel, not below the rank of Inspectors of Police to seize the vehicle and also to file a private complaint, however, in respect of compounding the offence, the police personnel have not been invested with the powers by issuance of separate Government Order and only the District Collector and Revenue Divisional Officers alone have been empowered to compound the offence on collecting the necessary compounding fee and penalty. Only on that premise, it is the stand of the learned senior counsel for the petitioner and the learned Addl. Advocate General that police personnel cannot be brought within the ambit of officers, who are persons authorised to compound the offence, as no power has been vested on the police personnel in terms of Section 23-A (1) of the MMDR Act.

113. However, a careful perusal of Section 23-A of the MMDR Act, extracted supra, makes it clear that an offence punishable under the MMDR Act or any rule made thereunder could be compounded either before or after the institution of the prosecution, by the person, authorised under Section 22 to make a complaint to the Court with respect to that offence. There is a pointed inclusion of all the officials, who have been empowered to file a private complaint, to compound the offence on receipt of compounding fee and penalty. However, a perusal of G.O. Ms. No.170, more particularly the portion of the Government Order relating to the officials, who are empowered to compound the offence u/s 23-A of the MMDR Act, the police personnel have not been included within the purview of being an officer authorised to compound the offence u/s 21 (4).

114. In this regard, it is the submission of the learned senior counsel for the petitioner that Rules, 2011, defines *"Authorised Officer"* and the District Collector being the authorised officer, the inclusion of police personnel within the ambit of authorised person u/s 23-A is impermissible and, therefore, the

Government has rightly not included the police personnel within the ambit of authorised person u/s 23-A.

115. The definition of "*Authorised Officer*" under Rules, 2011 has already been extracted. The manner of seizure and confiscation is provided for u/r 8 of Rules, 2011. For better appreciation, Rule 8 is extracted hereunder :-

> ***"8. Seizure and Confiscation. –***
>
> *1) Every grantee of registration permitted to stock or transport minerals shall allow the authorised officer or authority empowered by the Government under the provisions of the Act or competent authority to enter and inspect any premises where the mineral is kept or stored or transported, including the premises where imported minerals are kept or stored.*
>
> *2) Every officer seizing mineral under these rules shall prepare the list of mineral seized and deliver a copy thereof signed by him to the person found in possession of such minerals. Thereafter the officer shall hand over such property to the concerned Tahsildar for safe custody. The Tahsildar shall fix the property with seal and send information to the District Collector for taking action."*

116. As already stated, persons not below the rank of Deputy Tahsildar, appointed as Executive Magistrates under sub-section (1) of Section 20 of the Code of Criminal Procedure, the authorities under the Mining and Geology Department and the Inspectors of Police of the respective jurisdiction have been empowered u/s 21 (4) of the MMDR Act to effect seizure. Such being the case, Rule 8 (1) empowering the District Collector, as the authorised officer u/r 2 (ii) of the Rules, 2011 in addition to the authorities empowered under the MMDR Act to effect seizure, to that extent the Rule cannot be said to be bad.

117. However, insofar as Rule 8 (2) prescribing the authority, who had seized the vehicle to hand over possession of the same to the Tahsildar, which is to be kept under seal by the Tahsildar after duly informing the same to the District Collector, who is also an authority empowered under rule 8 (1) is not in consonance with the provisions of the Act, as under the Act the materials along with the vehicle so seized is to be produced before the Court on a private complaint being filed and in addition to an FIR being registered, if it is seized by the police personnel. Rule 8 (2) being inconsistent with the MMDR

Act, necessarily to that extent the said provision is against the provisions of the Act and, therefore, Rule 8 (2) cannot survive.

118. Further, it is to be pointed out that once the seizure is effected, depending upon the authority effecting seizure, the provisions of law, be it the MMDR Act or the provisions of IPC has to be followed, which resultantly would result in the filing of a private complaint, if it is seized by any authority other than the police personnel, as prescribed u/s 22 of the MMDR Act and in case of it being seized by the police personnel, in addition to the registration of FIR under the IPC, private complaint by invoking Section 22 of the MMDR Act before the court of competent jurisdiction has to be filed. There can be no escape from following the said provisions.

119. It is well settled that the Rules cannot be in derogation of the provisions of the MMDR Act and the Government Orders, which are issued on the basis of the Rules so framed, should also be in conformity with the Act and the Rules. However, as noted above, while the police personnel have been brought within the ambit of an authorised officer empowered to file a private

complaint, the said official would necessarily have to be an authority empowered to compound the offence, as all the persons, who have been empowered u/s 22 of the Act are to be invested with powers to compound the offence u/s 21 (4). Merely because no Government Order has been issued empowering the police personnel to be authorised person to compound the offence under Section 23-A (1) would not divest the police personnel of the power, as by implied inclusion, on the basis of Section 22 of the MMDR Act, the police personnel, who have been empowered as person authorised to file the private complaint get the power to compound the offence u/s 23-A (1) of the MMDR Act.

120. Therefore, insofar as the third leg of the issue relating to the police personnel being authorised to compound the offence, it is clear from Section 23-A that the person authorised u/s 22 of the MMDR Act to make a complaint to the Court with respect to that offence is delegated as the person authorised to compound the offence even by the Act. This Court, having held that u/s 22 the authorisation of the police personnel to file private complaint before the court of competent jurisdiction, is valid and is within the framework of the

MMDR Act, the police personnel is clothed with powers even by the MMDR Act to compound the offence insofar as the offence u/s 21 (4) of the MMDR Act is concerned. Therefore, mere non-inclusion of police personnel in the Government Order would not rob the police personnel of their right conferred under the Act so long as the police personnel have been empowered as person authorised under Section 22 and, therefore, the police personnel would be an authority empowered to compound by implied inclusion and there is no necessity for the inclusion of the police personnel to be an officer to compound the offence in the Government Order in G.O. Ms. No.170.

121. **Accordingly, on the first issue this Court holds that there is no embargo in the police personnel being brought within the ambit of *"authorised officer empowered"* u/s 21 (4), 22 and 23-A of the MMDR Act.**

REFERENCE ISSUE NO.2 :

If the police officer cannot be brought within the fold of an authorised officer and hence he does not have the power to seize the vehicles/materials, what will be the effect of such seizure that had taken place after G.O.Ms. No. 170, dated 05.08.2020 was issued?

122. **This issue of reference, leaning on reference issue No.1, which has been held in the affirmative holding that bringing the police personnel within the ambit of "*authorised officer empowered*" u/s 21 (4), 22 and 23-A of the MMDR Act is legally permissible, the vehicles/materials, which have been seized by the police personnel on the basis of the empowerment granted by the Government vide G.O. Ms. No.114 dated 18.9.2006, which has been followed in G.O. Ms. No.170 dated 5.8.2020, the said G.O. Ms. No. 170 dated 5.8.2020 does not suffer the vice of any illegality and, therefore, the seizuresmade would be legal and within the framework of Section 21 (4) of the MMDR Act.**

REFERENCE ISSUE NO.3 :

Whether the police officer who also happens to be the authorised officer, registers an FIR for IPC offence and the offence under the Act, can partly compound the offence under the Act and proceed further only for the IPC offence with respect to the very same transaction?

123. There can be no embargo for the police officer to register an FIR for the offence under the IPC. However, when the said authority, so authorised, also files the private complaint and initiates the prosecution under the MMDR Act, the authority comes within the fold of the person authorised u/s 22 of the MMDR Act and, therefore, would be a person authorised to compound the offence u/s 23-A.

124. The power of the police personnel to register an FIR for the offence under the IPC and also for the offence u/s 21 (4) of the MMDR Act has been approved in *Sengole case*. The said view of the Division Bench has been followed in *Prakash Nayak case.* For better appreciation, the relevant portion of the decision in *Sengole case* is quoted hereunder :-

> *"38. In two of the cases before us, the cases have been registered not only under the provisions of IPC, but also under the provisions of the Mines and Minerals Act. Of course, an offence under Section 21 of the Mines and Minerals Act is cognizable and, therefore, the police can register a case and investigate. [see paragraph 28 of the judgement in Jeewan Kumar Raut case]. It is too well settled that in an occurrence, apart from the offences which are non cognizable in nature, if, cognizable offences have also been committed, it is*

absolutely necessary for the police to register a case in respect of the entire occurrence and to investigate the case. This legal position has been made clear by Section 155 (4) of the Code. Under Section 190 of the Code, on a police report in respect of offences of which some are cognizable and the others are non cognizable, the Magistrate may take cognizance. As provided in Section 21(6) of the Mines and Minerals Act, an offence under sub-section (1) of Section 21 is cognizable and therefore, it is lawful for a police officer to register a case as provided in Section 154 of the Code of Criminal Procedure and to investigate the same as per the provisions of the Code of Criminal Procedure. But, the difficulty arises only in the matter of taking cognizance. Section 22 of the Mines and Minerals Act prohibits cognizance being taken except upon a complaint in writing made by a person authorised either by the Central Government or the State Government. If the act of the accused constitutes exclusively an offence under the Mines and Minerals Act, it goes without saying that the police officer on completing the investigation, cannot lay a final report because, on such report, the court cannot take cognizance in view of the bar contained in Section 22 of the Act. If the Act of the accused makes out an offence under IPC as well as an offence under Section 21 of the Mines and Minerals Act, the registration of the case under both the enactments is not illegal and the police can further

investigate into such cases and file a final report confining to the offence under the Indian Penal Code alone. In respect of the offence under Section 21 of the Mines and Minerals Act, it is for an authorised person to file a complaint before the jurisdictional Magistrate, upon which, cognizance can be taken. As we have already stated, since both the offences are distinct [as the ingredients are different], the trial of both the cases can go as per the Code of Criminal Procedure and finally there can also be punishment under both the enactments."

(Emphasis Supplied)

125. In view of the above, there can be no embargo for the police personnel to register an FIR and proceed with investigation and also file a private complaint before the court of competent jurisdiction upon seizure of the vehicle. This Court, already having held that the *"person authorised"* occurring u/s 23-A of the MMDR Act would also include a police personnel by virtue of the inclusion of the police personnel u/s 22 of the MMDR Act, though not the police personnel have been included as person authorised under Section 23-A of the MMDR Act by means of any Government Order, the power of compounding necessarily flows to the police personnel.

126. In this background only, the present issue has cropped up. However, the issue finds answer from the decision of the Apex Court in *Jayant's case*, wherein the Apex Court has held that the bar under sub-section (2) of Section 23-A would stand attracted only in respect of offence under the MMDR Act and the investigation for the offence under IPC would not be curtailed. The relevant portion of the said order is quoted hereunder :-

> *"17. 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 Sections 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 subsection 2 of Section 23A of the MMDR Act will be attracted.*

17.1 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 subsection (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 MMDR Act or any rule made thereunder.

17.2 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.

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 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 subsection 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 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 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.

18. 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.

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 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 States concerned."

(Emphasis Supplied)

127. Being the consistent view of the Courts that the continuance of the prosecution under the offences registered under IPC and the offences registered under the MMDR Act, both can be proceeded with, merely because the offence under the MMDR Act is compounded, that would not in any way put fetters on the continuance of the prosecution insofar as IPC offences are concerned.

128. It is to be pointed out that offences under the IPC are proceeded with, where penal consequences are entailed on completion of trial.

However, insofar as compounding of offence is concerned, sub-section (2) gives a very clear answer that compounding of the offence would not be a bar for continuance of the prosecution for the offence under the IPC. For better clarity, sub-section (2) of Section 23-A is extracted hereunder :-

> *"23-A. .....*
>
> *(2) 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."*

129. There is a clear mandate under sub-section (2) that no proceeding or further proceeding shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith. Therefore, the compounding of the offence under the MMDR Act relates only insofar as the offender is concerned and not with regard to the mineral, tool, equipment, vehicle or any other thing seized as provided for under sub-section (4) of Section 21.

130. The proceedings towards the offender under the MMDR Act alone would come to a close on the offence being compounded under Section 23-A (1) and insofar as the proceeding relating to the other things, viz., mineral, tool, equipment, vehicle or any other thing seized as provided for under sub-section (4) of Section 21 would continue. Further, as laid down in *Jayant case*, there is no fetters on the continuance of prosecution on both the fronts, viz., under the relevant provisions of IPC and also the provisions of the MMDR Act even after compounding of the offence. Therefore, it is clear that one does not lean on the other and in such a situation, the mere fact that the offence has been compounded under the MMDR Act would in no way be detrimental to the continuance of the prosecution under IPC. The transactions, viz., the prosecution under IPC and the prosecution under the MMDR Act are wholly isolated and distinct and not connected with each other, the compounding of offence under the MMDR Act cannot have any bearing on the prosecution initiated under the Indian Penal Code.

131. **In view of the discussion above, the police personnel, who is a person authorised to compound the offence under Section 23-A and who**

happens to be the very same officer, who has registered an FIR, there would be no impediment for the said police authority to compound the offence insofar as MMDR Act is concerned and at the same time proceed with the prosecution for the offence registered under the Indian Penal Code.

132. From the discussion aforesaid, there could be no second-guessing that police personnel, who are authorised u/s 22 to file a private complaint, automatically get the power to compound the offence u/s 23-A. So also the other persons, who have been authorised u/s 22. However, with regard to compounding, certain levies in the form of penalty is necessarily to be imposed, as is evident from Section 23-A (1).

133. It is not anti-thesis to the present scenario that the officers, who have been empowered as the person authorised to compound the offence are persons, who are not in the know-how of the mining activity or have adequate knowledge about the mineral or the value and quality of the mineral so mined and the manner in which the penalty is to be levied whilst compounding the offence.

134. In respect of minor minerals except Granite, the Revenue Divisional Officers/Sub Collectors have been delegated with powers under Section 23-A (1) of the MMDR Act to compound the offence on receipt of report from the enforcing officials on seizure of vehicles, tools, etc., involved in illegal mining/illegal transportation.

135. However, insofar as compounding of offence is concerned, as pointed out above, the authorities, who have been empowered u/s 22 of the MMDR Act would be the officers who would be entitled to compound the offence on collecting the necessary penalties, fees and other charges. Further, as pointed out above, a Government Order is not necessary for empowering an officer, as the Act itself takes care of the said contingency, by clearly prescribing that the persons authorised u/s 22 would be the persons authorised to compound the offence u/s 23-A (1).

136. However, G.O. Ms. No.170 prescribes the District Collector as the authorised person to compound the offence in respect of major mineral, viz.,

Granite and the Revenue Divisional Officer has been authorised as the person to compound the offence in respect of minor minerals, except granite. However, such an authorisation of the persons, without inclusion of the persons authorised u/s 22 is wholly illegal. Therefore, this Court holds that in addition to the officers, viz., the District Collectors and the Revenue Divisional Officers, the authorities, who have been authorised to file a private complaint u/s 22 of the MMDR Act are equally empowered to compound the offence u/s 23-A (1). To that extent the G.O. Ms. No.170 requires to be modified as otherwise, it would be in contravention of the Act, which is impermissible.

137. Even though this Court has held that the officers prescribed u/s 22 of the MMDR Act in addition to the District Collectors and the Revenue Divisional Officers being the persons authorised to compound the offence u/s 23-A (1) of the MMDR Act, however, it is the submission of the learned Amicus, that the said officers are oblivious of the quality, quantity and value of the mineral seized, which is the determinant factor, while computing the value of the amount that is required to be paid for the purpose of compounding the offence. This, in effect, leads to wrongful computation of

the amount and in most of the cases, irrespective of the value of the mineral seized and in stark contravention of Rule 36-A, an amount of Rs.25,000/- alone is imposed for the purpose of compounding, which causes grave loss to the exchequer and allows the offender to go scot-free. This is the main reason for amending Section 21 (1) and (2) to include penal consequences, which will follow in the event of illegal quarrying and consequent seizure.

138. Rule 36-A has already been extracted supra and a careful reading of the same clearly shows that for any contravention of the provisions of sub-sections (1) and (1-A) of Section 4 of the MMDR Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty-five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer as the case may be, or in the alternative, he shall be liable to be punished as provided in sub-section (1) of Section 21 of the Act. In respect of minor minerals, viz., building and road construction stones including gravel, ordinary sand, earth and turn, ordinary clay including silt, brick and tile clay, the powers and duties exercisable and dischargeable by the District Collectors shall be

exercisable and dischargeable by the Revenue Divisional Officers concerned within their respective jurisdiction.

139. In this regard, learned Amicus placing reliance on the decision of the Apex Court in ***Karnataka Rare Earth – Vs – Senior Geologist, Dept. of Mines & Geology (2004 (2) SCC 783)***, submitted that the heading of *'Penalties'* shown for Section 21 is nothing but a marginal note and cannot be construed in its literal meaning.

140. It is not disputed that the Tamil Nadu Minor Mineral Concession Rules, 1959, was framed in exercise of powers conferred u/s 15 r/w 23-C of the MMDR Act. Contravention of the provisions of sub-section (1) and (1-A) of Section 4 of the MMDR Act would attract the penalties provided for u/r 36-A. The aforesaid Rule 36-A was inserted vide G.O. Ms. No.166, Industries dated 16.6.1994. For contravention of the provisions of sub-section (1) and (1-A) of Section 4, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty-five thousand shall be charged and recovered from the offender/person or in the alternative, he shall be

liable to be punished as provided in sub-section (1) of Section 21 of the MMDR Act.

141. Sub-section (1) to Section 21 of the MMDR Act prescribes that for any contravention of the provisions of sub-section (1) and (1-A) to Section 4, the offender shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to Rupees Five Lakhs per hectare of the area.

142. Sub-section (2) to Section 21 further prescribes that any rule made under any provision of this Act, for any contravention thereof, shall provide for a punishment of imprisonment for a period which may extend to two years or with fine which may extend to Rupees Five Lakhs or with both and in the case of a continuing contravention, with additional fine which may extend to Rupees Fifty Thousand for every day during which such contravention continues after conviction for the first such contravention.

143. Sub-sections (1) and (2) were substituted by Act 10 of 2015 with effect from 12.1.2015. Therefore, prior to the substitution, though the Section carried both fine and imprisonment as punishment, however, the substitution was only with regard to the quantum of fine and the length of imprisonment. Barring that change, there is no other substitution to the said sub-sections (1) and (2) to Section 21.

144. Section 21 starts with the note *"Penalties".* What would be the effect of the note *"Penalties"* appearing in Section 21 is the moot question, which fell for consideration before the Apex Court in *Karnataka Rare Earth* case and deliberating upon the said heading, the Apex Court held as under :-

> *"7. In our opinion, the demand by the State of Karnataka of the price of the mineral cannot be said to be levy of penalty or a penal action. The marginal note of the Section 'Penalties', creates a wrong impression. A reading of Section 21 shows that it deals with a variety of situations. Sub-Sections (1), (2), (4), (4A) and (6) are in the realm of criminal law. Sub-Section (3) empowers the State Government or any authority authorized in this behalf to summarily evict a trespasser. Sub-Section (5) empowers the State Government to recover rent, royalty or tax from the person who has raised the mineral from any land without any lawful authority and also*

empowers the State Government to recover the price thereof where such mineral has already been disposed of inasmuch as the same would not be available for seizure and confiscation. The provision as to recovery of price is in the nature of recovering the compensation and not penalty so also the power of the State Government to recover rent, royalty or tax in respect of any mineral raised without any lawful authority can also not be called a penal action. The underlying principle of sub-Section (5) is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority.

* * * * * * *

12. Is sub-section (5) of Section 21 a penal enactment? Can the demand of mineral or its price thereunder be called a penal action or levy of penalty?

13. A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. (Blacks Law Dictionary, Seventh Edition, p.1421). Penalty is a liability composed as a punishment on the party committing the breach. The very use of the term 'penal' is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrong-doer in favour of the person wronged, not limited to the damages suffered. (See : The Law Lexicon, P. Ramanatha Aiyar, Second Edition, p.1431).

14. In support of the submission that the demand for the price of mineral raised and exported is in the nature of penalty, the learned counsel for the appellants has relied on the marginal note of Section 21. According to Justice G.P. Singh on Principles of Statutory Interpretation (Eighth Edition, 2001, at p.147) though the opinion is not uniform but the weight of authority is in favour of the view that the marginal note appended to a Section cannot be used for construing the Section. There is no justification for restricting the Section by the marginal note nor does the marginal note control the meaning of the body of the Section if the language employed therein is clear and spells out its own meaning. In Director of Public Prosecutions Vs. Schildkamp, (1969) 3 All ER 1640, Lord Reid opined that a side note is a poor guide to the scope of a section for it can do no more than indicate the main subject with which the section deals and Lord Upjohn opined that a side note being a brief précis of the section forms a most unsure guide to the construction of the enacting section and very rarely it might throw some light on the intentions of Parliament just as a punctuation mark.

15. We are clearly of the opinion that the marginal note 'penalties' cannot be pressed into service for giving such colour to the meaning of sub-Section (5) as it cannot have in law. The recovery of price of the mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled

in law to raise the same. There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory."

(Emphasis Supplied)

145. From the ratio laid down above, it clearly manifests that the marginal note does not control the meaning of the body of the section as the language employed therein, in clear terms, spells out its own meaning. The marginal note *"penalties"* creates a wrong impression in the context of Section 21 (1) and (2).

146. Even a bare perusal of sub-sections (1) and (2) of Section 21 clearly shows that the penalties, which are shown therein are not penalties, which are prescribed for the purpose of compounding the offence. The said penalties are mainly for the purpose of trial before the Special Court, which would be more evident from sub-section (2) wherein it has been clearly held that upon conviction under sub-section (1), if the contravention is continued, would result in the imposition further penalty. The above clearly shows that

the penalty, which is imposable under Section 21 (1) and (2) is a penal consequence upon conviction after full-fledged trial.

147. Therefore, the marginal note *"penalties"* in Section 21 does not spell out that it is penalty, which is levied in compensation thereof relating to the recovery of the mineral, which is owned by the State. The recovery of price of the mineral, which has been illegally removed by a person, who is held to be not entitled to under law to raise the same and, therefore, penal consequences provided for u/s 21 (1) and (2) would clearly rid itself of the meaning of penalty. In the above scenario, this Court is required to appreciate the penalties, which have been provided for under Rule 36-A of Rules, 1959, and the extent of its applicability insofar as compounding u/s 23-A (1) is concerned.

148. Further, it is to be emphasised that merely because the mineral is seized, it would not absolve the offender of the offence committed. The lifting of mineral, without authority, is not only an act against the exchequer in terms of monetary loss, but it is an act against the environment, which act

distorts the ecological balance, thereby, causing grave concern with regard to the livelihood of mankind. Therefore, the penalty, prescribed u/s 21 (1) and (2) is not a penalty in the literal sense for the purpose of compounding the offence, but it is only relatable to trial of the offence under the MMDR Act and in the trial, if the offence is compounded, the Court would not be in a position to impose the punishment of conviction, but could very well restrict itself to fine in the absence of compounding of offence, and to that extent the full rigours of Section 21 (1) and (2) will follow.

149. Recovery of price of mineral, which has been illegally lifted from the land without due authorisation, the offender is bound to compensate the State for the said loss. Though the said mineral is seized, however, what is sought to be compensated is with regard to the illegal act of the offender in raising the mineral illegally. In fact, penalty is nothing but the recovery of compensation from the offender with regard to the damage caused to the environment. If an offender is allowed to walk out premising that the mineral has been recovered and, therefore, the offender is not liable to pay any amount towards compensation, that would not only be against the import of

Rule 36-A, but would give the offender a premium to perpetuate the same offence repeatedly. Only in that backdrop, the Parliament, in its wisdom has brought in sub-section (2) to Section 21, which deals with repeated contravention, in and by which continuing offences by the very same offenders are dealt with, with more severity.

150. It would be wholly impermissible and against law to hold that merely because the mineral has been recovered and no loss is caused to the Government, imposition of penalty under Rule 36-A is uncalled for or cannot be sustained. When the Parliament has clearly codified the process in which penalty is to be levied and where punishment is to be given, which has been given a seal of approval by the Supreme Court, rendering any other finding would neither be in the interest of the Government nor in the interest of the environment and would be against the ratio laid down on the said aspect by the higher judicial forum.

151. **Therefore, the penalties provided under Section 21 (1) and (2) are not in effect penalties, within its particular meaning and it is a penal**

provision, which is to be invoked after trial and the penalties provided for u/r 36-A alone would fall within the meaning of penalties and any contravention of Section 4 (1) and (1-A) have to be penalised by invoking the penalties provided for under Rule 36-A of Rules, 1959.

152. This Court has already held that the persons authorised u/s 22 are empowered to compound the offence u/s 23-A (1). However, quantification of penalty is a crucial question, with regard to which the Division Bench in *Muthu case*, has expressed its anguish and the relevant portion of the said order is quoted hereunder :-

> *"14.We may note, the power of compounding under Section 23A of the M&M Act is the power which is required to be exercised by application of mind. This is not a mere administrative power, but has the trappings of a quasi-judicial one. The effect of the exercise is that the very prosecution itself is eschewed.* ***To our dismay, we are constrained to hold that authorized persons are treating these provisions by acting as collecting agents of fines imposed. Perhaps they need to be sensitized on the importance of sand which will have a far-reaching consequence on the universe as such****. The loss and offence committed cannot be equated in terms of money. There is huge misconception on the part of the*

applicants. Rivers and water bodies are to be protected not only for the present generation, but also for the future. They are meant to be used by all living and nonliving beings. Therefore, it is a fit case where the Government viz., the Secretary to Government, Home Department, Fort St. George, Chennai, will have to take serious view of this matter.

15. Though external aid is not to be resorted to as a matter of course, we find that the provisions contained under Section 49 (a) and (e) of the Tamil Nadu Forest Act and Section 14(4) of the Tamil Nadu Prohibition Act also provide for such a mechanism. ***In fact, law is required to be applied with more vigour, for any violation of the M&M Act and the Rules will have a wider ramification on the mother earth than under the Tamil Nadu Prohibition Act. Thus, there appears to be a lack of understanding of the sensitivity of the issue involved****. Similar is the position with respect to the Tamil Nadu Prohibition and Illegal Mining and Transportation of Storage of Minerals and Dealers, 2011.*

16. Much reliance has been made on Rule 36(A) of the Tamil Nadu Minor and Minerals Concession Rules, 1959. We would like to place on record the relevant portion of the aforesaid provision, which speaks on penalty:-

> *"36-A. Penalties. - (1) Whenever any person contravenes the provisions of sub-sections (1) and (1-A) of Section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the*

normal rate subject to a minimum of twenty-five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer, as the case may be, or in the alternative, he shall be liable to be punished as provided in sub-section (1) of Section 21 of the Act."

17. This Rule merely speaks about the penalties alone. ***These penalties are to be construed only for the purpose of compounding the offence committed. On a reading of this Rule, it is very clear that the penalty itself is based on seigniorage fee subject to the minimum amount****. This Rule, with due respect, does not speak about the release of the materials seized, including the vehicle. Hence, Rule 36(A) has to be read in consonance with Section 23A of the M&M Act. We have already held that compounding under Section 23A is different from the exercise of power under Section 21(4A) of the Act."*

(Emphasis Supplied)

153. From the lamenting of the Division Bench, it is evident that the person authorised u/s 22 of the MMDR Act, empowered to compound the offence u/s 23-A (1) of the MMDR Act, not only act merely as collecting agents, but the act performed by them is not in consonance and in conformity

with Rule 36-A. However, this Court cannot transgress much into the law making domain and the executive domain of the Government with regard to the persons, who could be entrusted with the task of quantifying the compounding fee, while the offence is compounded u/s 23-A (1) of the MMDR Act.

154. The issue with regard to construing of Section 23-A fell for consideration before the Apex Court in *Jayant case* wherein it was held that compounding of offence is on the touchstone of the concept of *"polluters pay for the damage caused"* so that the damage caused to the environment by the person is compensated atleast monetarily.

155. The Supreme Court has further held that there should be some stringent provisions which will have a deterrent effect, thereby the offenders would think twice before committing such offences. However, it has to be pointed out that Section 23-A was not struck down by the Apex Court, but an observation was made that since the provisions of Section 23-A are not under challenge, the Supreme Court held that "*Section 23-A of MMDR Act so long as*

it stands, we leave the matter there and leave it to the wisdom of the legislature and the State concerned".

156. Rule 36-A details the manner in which penalty is to be arrived at, but basing the minimum at Rs.25,000/-. While quantifying the penalty, the importance of the mineral and its value in the market are determinant while arriving at the penalty. It is to be pointed out that the minimum amount of Rupees Twenty-Five Thousand fixed as penalty should not be uniformly applied for all minerals, which are illegally mined and transported, which are seized by the person empowered u/s 21 (4) on which a private complaint is filed by the person authorised u/s 22 which falls for compounding u/s 23-A (1) of the MMDR Act. The factor for compounding the offence u/s 23-A (1) of the MMDR Act would be in reference to the Schedules under the MMDR Act, which prescribes the royalty and the seigniorage fee payable on the specified mineral which has been illegally mined and transported.

157. However, the persons authorised u/s 22, who are the persons authorised to compound the offence u/s 23-A (1) have no expertise, either on

the mineral mined or the quality and quantity of the mineral or the nuances under the different Schedules under the MMDR Act with regard to levy, which determines the manner in which the enhanced seigniorage fee at fifteen times in addition to other fees collectable from the offender for compounding the offence under Section 21 (4) of the MMDR Act.

158. Though confiscation and release of the vehicle are within the domain of the Court, with which the persons authorised would have no say, however, to allow the offender to go unscathed from prosecution under Section 21, which also carries punishment of imprisonment, the penalties, as provided for under Rule 36-A.

159. Necessarily when the MMDR Act has invested the power of compounding on the person authorised u/s 22, there could be no going against the provisions of the Act, but equally the State Government, which has conferred the power on the person authorised u/s 22, could very well invoke the rule making power u/s 15 r/w 23-C of the MMDR Act to frame rules in such a manner that before the person authorised u/s 23-A (1) of the MMDR

Act passes any order compounding the offence against an offender, the necessity for obtaining an expert opinion on the mineral, which has been seized and the computation of value to be arrived at on the basis of Rule 36-A be obtained from the Director of Geology and Mines, who would be the best person to find out the nature of the mineral as also the amount that is to be computed and levied on an offender to have the offence against the offender compounded u/s 23-A (1) of the MMDR Act. Only if such a procedure is included by making necessary amendment to the Rules, Rule 36-A would be followed in letter and spirit and only in such a scenario, the destruction to the environment would be minimised and exchequer will be safeguarded from the onslaughts of illegal mining sleuths.

160. **In the above stated backdrop, this Court, in the interests of the environment as also the State, suggests the Additional Chief Secretary to the Government, Natural Resources Department, in consultation with the Commissioner, Directorate of Geology and Mining to take necessary steps for making amendment to the Rules, 1959, more particularly, Rule 36-A, for obtaining expert opinion of the Director of Geology and Mines with regard to**

the mineral that is seized, prior to passing any orders compounding the offence u/s 23-A (1) by the person authorised u/s 22 of the MMDR Act.

REFERENCE ISSUE NO.4 :

Whether the authorised officer, who seizes the vehicle under Section 21(4) of the Act alone can initiate private complaint under Section 22 of the Act or a different officer can be appointed for initiation of criminal proceedings under the Act-in other words, the officer, who seizes the vehicle and the officer who initiates the private complaint should be the same officer?

161. Section 21 (4) of the MMDR Act mandates that the officer or authority specially empowered in this behalf to effect seizure of the vehicle. The authorities who have been empowered u/s 21 (4) are the revenue officials, the District Forest Officers, Mining Officials and police personnel, not below the rank of Inspectors of Police. However, what is distinct in the above is that while the seizure by revenue officials and District Forest Officers could only be limited to the provisions of the MMDR Act, however, insofar as the police personnel is concerned, in view of the cognizability of the offence, in addition to the seizure under the MMDR Act, the police personnel could also

register an FIR under the IPC and take up investigation. This Court, to the said effect, has already held above, that the police personnel would very well come within the ambit of *"authorised officer empowered"* u/s 21 (4).

162. However, the terminology used in Sections 22 and 23-A of the MMDR Act is *"person authorised"*. However, it is without any ambiguity that *"person authorised"* occurring in Sections 22 and 23-A would only imply one and the same person as the person authorised u/s 22 is the person who can compound the offence u/s 23-A. Therefore, it is within the domain of the State Government, by virtue of its rule making powers u/s 15 r/w 23 of the MMDR Act to authorise the authority, who may be empowered to seize the vehicle and lodge a private complaint.

163. In view of the finding given to issue No.1, the enforceability of G.O. Ms. No.170 is proper, which has been answered in issue No.2, the seizure of vehicles by the police personnel in pursuance of G.O. Ms. No.170 dated 5.8.2020 are wholly legal.

164. In such a background, the reference issue No.4has been predicated as to whether the *"officer or authority specially empowered in this behalf"* appearing in Section 21 (4) and the *"person authorised"* appearing in Section 22 of the MMDR would mean the same person or could be different officers.

165. Consolidated Government Order in G.O. Ms. No.170 dated 05.08.2020 was issued by the Government in and by which the empowerment of various officials, who are authorised to perform the duties prescribed u/s 21 (4), 22 and 23-A have been spelt out. Therein, in the said Government Order, the particular Government Order under which the respective authorities have been empowered to exercise the powers u/s 21 (4) are provided and they are:-

i) G.O. Ms. No.1464 dated 8.12.1981 empowered the officers of the Revenue Department not below the rank of the Deputy Tahsildar appointed as Executive Magistrates under sub-section (1) of Section 20 of the Code of Criminal Procedure, 1973 to exercise the powers conferred under sub-section (4) to Section 21;

ii) G.O. Ms. No.626 dated 11.6.1986 empowered the Assistant Director of Geology and Mining, Assistant

Geologists, Special Tahsildar (Mines), Special Deputy Tahsildar (Mines) of the Department of Geology and Mining as Special Executive Magistrates for the purpose of exercising the powers under sub-section (4) to Section 21 within their respective jurisdiction; and

iii) G.O. Ms. No.114 dated 18.9.2006 empowered the police personnel not below the rank of Inspectors of Police to exercise the powers under sub-section (4) of Section 21 of the MMDR Act.

166. The aforesaid G.O. Ms. No.170 further prescribes the officers, who are authorised to file private complaint before the Court of competent jurisdiction as per Section 22 of the MMDR Act and the relevant Government Orders under which such authorisation has been granted are :-

i) G.O. Ms. No.4 dated 2.1.1998 authorises the Revenue Divisional Officers concerned to make complaint under Section 22 of the Act in respect of cases falling within their jurisdiction relating to minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turn, ordinary clay including silt, brick and tile clay;

ii) G.O. Ms. No.167 dated 2.2.2009 authorising the District Forest Officers concerned to make complaint by way of an affidavit under Section 22 of the MMDR

Act in respect of cases falling within their jurisdiction; and

iii) *G.O. Ms. No.12 dated 2.2.2009 issued under Section 22 of the MMDR Act authorising the District Forest Officers and the Police Personnel not below the rank of Inspector of Police to make complaint in writing by way of an affidavit to the Court of competent jurisdiction for any offence punishable under the said Act or any Rules made thereunder in respect of cases falling within their jurisdiction.*

167. For the purpose of making a seizure and filing private complaint under Sections 21 (4) and 22, insofar as police personnel are concerned, there is no issue, as officers not below the rank of Inspectors of Police of the respective jurisdiction have been empowered to effect seizure and also file private complaint. However, there is a marked difference on the authorisation granted under Section 21 (4) and Section 22 insofar as Revenue Officials are concerned. While the power of seizure is conferred on all the officers not below the rank of Deputy Tahsildar, who have been appointed as Executive Magistrates under sub-section (1) of Section 20 of the Code of Criminal Procedure, but when it comes to the filing of complaint under Section

22, only the Revenue Divisional Officers/Sub Collectors, who have been empowered to file a private complaint either on seizure being made by them or in case of seizure being made by the enforcement authorities insofar as minor minerals are concerned. Therefore, person, who effect seizure, but below the cadre of Revenue Divisional Officers in the hierarchy were to submit a report to the Revenue Divisional Officer/Sub Collectors of the respective jurisdiction, who alone can file private complaint before the competent court.

168. A careful perusal of the persons authorised in the various Government Orders, which have been show above shows that the Revenue Officials not below the rank of Deputy Tahsildars appointed as Executive Magistrates under sub-section 1 of Section 20 of the Code of Criminal Procedure, certain officers of the Mining and Geology Department and Police Personnel not below the rank of Inspectors of Police have been authorised to seize the vehicles by exercising powers u/s 21 (4). However, only the Revenue Divisional Officers, the District Forest Officers and Police Personnel not below the rank of Inspectors of Police have been authorised as the persons to file a private complaint u/s 22.

169. In this regard, it is to be noted that notwithstanding the fact that the Police Personnel can register an FIR under the Indian Penal Code, the offence under the MMDR Act being cognizable in nature as provided u/s 21 (6), the police personnel, not below the rank of Inspectors of Police have been authorised to file a private complaint before the court of competent jurisdiction as well. Insofar as revenue officials are concerned, though seizure of the vehicle could be made by the Revenue Divisional Officer, who is an authority higher in hierarchy to the Deputy Tahsildar, who have also been authorised to seize the vehicle, however, the Deputy Tahsildar is not a person authorised to file a private complaint and it is only the Revenue Divisional Officer, who is authorised to file a private complaint upon a report from the authorities lower in hierarchy to the Revenue Divisional Officer.

170. However, it transpires even from the order of reference that many a times, the officers, who seize the vehicles, viz., the police officers, seldom file the private complaint and they inform the revenue officials, whereinafter,

private complaint is filed. It is only in this backdrop, that the reference has been necessitated.

171. However, one aspect, which requires introspection before this Court could give an answer to the issue is that the District Forest Officers have not been authorised or empowered u/s 21 (4) for seizing the vehicle, but they have been authorised to file a private complaint.

172. If this Court were to give an opinion that the person, who seizes the vehicle and who files the complaint should be one and the same officer, the delegation conferred on the District Forest Officer would become otiose as the said authority has not been conferred with the power of seizure. In this backdrop, the reference requires to be looked into.

173. When there is a specific exclusion of the District Forest Officer from the ambit of Section 21 (4), the question that has been put forth requires to be looked at in a wider spectrum.

174. It is to be pointed out that there is no nexus between Section 21 (4) and Section 22. It is not of necessity that the authority who seizes the vehicle should be the authority who should file the criminal complaint under the MMDR Act. But a prudent approach warrants that the authority who seizes the vehicle should be the person authorised to file a private complaint u/s 22 so that delay and such other factors, including errors in the filing of the complaint could be avoided. The reason for this Court to arrive at the specific conclusion that it is not of necessity that the officer, who seizes the vehicle and who gives the complaint should be one and the same officer, is on account of the non-grant of authorisation to the District Forest Officer and officers of the revenue, who are below the Revenue Divisional Officers, who have been granted power of seizure u/s 21 (4). This clearly shows that it is not necessary that the officer who seizes the vehicle and who lodges the private complaint should be one and the same officer.

175. However, it should not be equally lost sight of that there are also authorities, who are authorised u/s 21 (4) as well as u/s 22, say for instance the Revenue Divisional Officer and the Police Personnel not below the rank of

Inspectors of Police, who wield both the powers. When such of those persons authorised seize the vehicle, it is their duty to lodge a private complaint u/s 22 of the MMDR Act and in addition to the above, the police personnel ought to register an FIR under the relevant provisions of the Indian Penal Code, so as to ensure speedy prosecution and trial.

176. **In the above backdrop, if an officer is empowered both under Section 21 (4) to seize the vehicle and also file a private complaint u/s 22, then in all earnestness and in the interest of justice, the authority, who had seized the vehicle alone should file the private complaint u/s 22. However, if the authority who seizes the vehicle u/s 21 (4) is not empowered as the person authorised to file a private complaint u/s 22, then the person authorised u/s 22 shall file the private complaint before the court of competent jurisdiction, upon filing of appropriate report by the enforcing authorities, who seized the vehicle. Therefore, the person who seizes the vehicle and who files the private complaint need not be one and the same officer, but as a matter of prudence, it would be better if it is one and the same person. Reference Issue No.4 is answered accordingly.**

177. **However, in view of the discussion made above, interest of justice and also the interest of speedy trial warrants that the persons, who have been authorised u/s 21 (4) also be authorised u/s 22 as well so that there is no delay in the initiation of prosecution and speedy trial. To that extent, this Court directs that the Government Orders aforesaid requires to be modified.**

178. However, one other aspect which requires to be pointed out is that while the offence under the MMDR Act is triable by the Special Court, which is in the rank of a Sessions Court, however, the offence under the Indian Penal Code, which is registered for similar offence are triable by a Magistrate of First Class or Second Class. In case an FIR is filed for the offence under IPC and a private complaint is filed for the offence under the MMDR Act, since the two authorities, who could take cognizance of the issue not being one and the same, there would arise a piquant situation, with regard to the trial of the case by two different authorities for the very same offence.

179. In this regard, learned Addl. Advocate General submitted that due to the ambiguity in the authority, who could take cognizance and try the issue, thousands of cases are pending at the stage of filing of final report/taking cognizance and, therefore, this Court may clarify the authority, which could deal with both the cases.

180. Similar issue fell for consideration before the Apex Court in *Pradeep Wodeyar case,* wherein, the Supreme Court, in identical circumstances, had occasion to consider the taking of cognizance by the Magistrate and the Special Court in respect of offence under the MMDR Act and IPC and considering the various provisions of law, held as under :-

> *"**C.1 The power to take cognizance***
>
> *19. Chapter XIV of the CrPC is titled -Conditions Requisite for Initiation of Proceeding?. Section 190 empowers the Magistrate to take cognizance of any offence:*
>
> *"190. Cognizance of offences by Magistrates. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-*
>
> *(a)upon receiving a complaint of facts which constitute such offence;*

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

20. Clauses (a), (b) and (c) of sub-section (1) of Section 190 contemplate cognizance being taken by a Magistrate of an offence by any of the following three modes, namely upon:

(i) the Magistrate receiving a complaint of facts which constitute an offence;

(ii) a police report of such facts; and

(iii) information received from any person other than a police officer or upon his own knowledge that an offence has been committed.

21. Section 193 reads as follows:

"193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

22. Section 193 stipulates that unless the case has been committed by a Magistrate to the Sessions Court under the

Code, no Court of Session shall take cognizance of any offence. But there are two exceptions to this formulation, namely, where:

(i) theCrPC has made an express provision to the contrary; and

(ii) an express provision to the contrary is contained in any other law for the time being in force.

23. The bar in Section 193 is to the Sessions Court taking cognizance of an offence, as a court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code.

24. Section 209 states that when a case is instituted either on a police report or otherwise, and it appears to the Magistrate that the offence is exclusively triable by the Sessions Court, he shall commit the case to the Court of Session. Section 209 reads as follows:

"209. Commitment of case to Court of Session when offence is triable exclusively by it. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating

to bail, remand the accused to custody until such commitment has been made;]

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

* * * * * * *

C.4.2 Joint trial and implied repeal

70. The general rule of construction is that there is a presumption against a repeal by implication because the legislature has full knowledge of the existing law on the subject matter while enacting a law. When a repealing provision is not specifically mentioned in the subsequent statute, there is a presumption that the intention of the legislature was not to repeal the provision. The burden to prove that the subsequent enactment has impliedly repealed the provision of an earlier enactment is on the party asserting the argument. This presumption against implied repeal is rebutted if the provision(s) of the subsequent Act are so inconsistent and repugnant with the provision(s) of the earlier statute that the two provisions cannot ?stand together'.44 Therefore, the test to be applied for the construction of

implied repeal is as follows: Whether the subsequent statute (or provision in the subsequent statute) is inconsistent and repugnant with the earlier statute (or provision in the earlier statute) such that both the statutes (or provisions) cannot stand together. The test when applied in the context of this case is whether Section 30B of the MMDR Act is inconsistent and repugnant to Section 220 CrPC that both the provisions cannot go hand in hand.

74. Section 30B of the MMDR Act provides for the constitution of the Special Court for speedy trial of offences for contravention of the provisions' of Section 4 of the Act. Does the fact that the Special Court has jurisdiction to try offences under the MMDR Act oust the jurisdiction of the Special Court to try offences under any other law (in this case the IPC). As has been noted above, the provisions of the Code may be held to be impliedly repealed, only if there is a 'direct conflict' between the provisions such that it is not possible to harmoniously interpret the provisions. It thus needs to be analysed whether Section 30B of the MMDR Act and Section 220 CrPC can be harmoniously construed.

75. The Judicial Magistrate First Class is invested with the authority to try offences under Sections 409 and 420 IPC. On the other hand, the Sessions Judge is appointed as a Special Judge for the purposes of the MMDR Act. If the offences under the MMDR Act and the IPC are tried together by the Special Judge, there arises no anomaly, for it is not a case where a

judge placed lower in the hierarchy has been artificially vested with the power to try the offences under both the MMDR Act and the Code. Additionally, if the offences are tried separately by different fora though they arise out of the same transaction, there would be a multiplicity of proceedings and wastage of judicial time, and may result in contradictory judgments. It is a settled principle of law that a construction that permits hardship, inconvenience, injustice, absurdity and anomaly must be avoided. Section 30B of the MMDR Act and Section 220 CrPC can be harmoniously construed and such a construction furthers justice. Therefore, Section 30B cannot be held to impliedly repeal the application of Section 220 CrPC to the proceedings before the Special Court.

* * * * * * *

C.6 "Authorised person" and Section 22 of MMDR Act

88. Section 22 of the MMDR Act stipulates that no Court shall take cognizance of any offence punishable under this Act or Rules, except upon a complaint made in writing by a person authorised on that behalf by the Central or the State Government. It has been contended by the appellant that before the Special Court (Sessions Court) took cognizance of the offence, no complaint was filed by the authorised person.

89. In State (NCT of Delhi) v. Sanjay, the principal question which was formulated for the decision of a two judge Bench was whether the Magistrate has the power to take cognizance of the offence upon a police report without a complaint (2014)

9 SCC 772 from the authorised person under Section 22 of the MMDR Act. Justice M Y Eqbal, delivering the judgment for the two-judge Bench, held that Section 22 only bars the prosecution and cognizance of offences for contravention of Section 4 of the MMDR Act without a written complaint and not for offences under the provisions of the IPC. The court also noted the object and policy underlying the MMDR Act in the context of environmental protection. The Court observed:

> *"62. Sub-section (1-A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. In other words no person will do mining activity without a valid lease or licence. Section 21 is a penal provision according to which if a person contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very important to note that Section 21 does*

not begin with a non obstante clause. Instead of the words "notwithstanding anything contained in any law for the time being in force no court shall take cognizance", the section begins with the words "no court shall take cognizance of any offence".

[…]

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the

Act and not for any act or omission which constitutes an offence under the Penal Code."

90. In view of the above discussion, the Court held: -

(i) The ingredients constituting an offence under the MMDR Act and the ingredients of the offences under the IPC are distinct; and

(ii) For the commission of an offence under the IPC, on receipt of a police report, the Magistrate having jurisdiction can take cognizance without awaiting a complaint by the authorized officer. A complaint is required in terms of Section 22 only for taking cognizance in respect of a violation of the provisions of the MMDR Act.

91. InKanwar Pal Singh v. The State of Uttar Pradesh58, a two judge Bench has followed the earlier decision in Sanjay (supra). In Jayant v. The State of Madhya Pradesh59, the appeal before this Court arose from a decision of the High Court rejecting the application under Section 482 CrPC for quashing FIRs alleging the commission of offences under Sections 379 and 414 IPC, Sections 4/21 of the MMDR Act and Rule 18 of the M.P. Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2006. The JMFC, taking note of the information and the decision of this Court in Sanjay (supra exercised powers under Section 1566 (3) Cr.P.C. and directed the registration of a criminal case for investigation. FIRs were registered on the basis of the order

passed by the Magistrate. The High Court was moved under Section 482 CrPC for quashing the FIRs on the basis of the bar contained in Section 22 of the MMDR Act. The petitions for quashing were dismissed on the basis of the decision in Sanjay (supra). After adverting to the decision in Sanjay (supra), Justice M R Shah, speaking for a two-judge Bench of this Court, noted that the prohibition contained in Section 22 of the MMDR Act against the prosecution of a person except on a written complaint of the authorised officer is attracted only when the prosecution is for contravention of Section 4 of the MMDR Act and would not apply in respect of an act or omission which constitutes an offence under Penal Code. The court observed that the bar under Section 22 of the Act kicks in with regard to the offence under Section 4 of the MMDR Act only when the Magistrate purports to take cognizance of the offence and not when the Magistrate orders further investigation under Section 156(3) CrPC. Referring a complaint for investigation under Section 156(3) would be at the pre-cognizance stage. Justice M R Shah observed: -

> *"16…Therefore, when an order is passed by the Magistrate for investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case, when such an order is made the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. That thereafter the investigating officer is required to*

send report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage the question with respect to taking cognizance by the learned Magistrate would arise.

92. The conclusions which were arrived at by the Court were as follows:

"21.1. That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In- charge/SHO of the police station concerned 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.

21.2. 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 the Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and the Rules made thereunder.

21.3. For commission of the offence under 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 the Rules made thereunder.

21.4. 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 In-charge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned 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 the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate."

* * * * * *

D. The Conclusion

85. In view of the discussion above, we summarise our findings below:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;

(iii) The decision in Gangula Ashok (supra) was distinguished in Rattiram (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the

offence and the apparent intention to prolong proceedings, among others;

(iv) In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;

(v) It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no 'failure of justice' under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC;

(vi) The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not apply to proceedings under the MMDR Act;

(vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC.Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;

(ix) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and

(x) The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a prima facie case against A-1, which is sufficient to arraign him as an accused at this stage."

(Emphasis Supplied)

181. From the ratio laid down in *Pradeep Wodeyar* case, it is clear that where the criminal machinery is set in motion by registration of an FIR under the provisions of IPC and simultaneously, a private complaint is also filed by the person authorised, which could only be the police official, before the Court of competent jurisdiction under the MMDR Act, in the interest of justice, a joint trial is to be conducted for both the IPC offence as well as the MMDR offence and in that sense, the matter ought to be placed before the Special Court for a joint trial.

182. The decision in *Pradeed Wodeyar case* being on the identical issue, this Court need not amplify anything, but to state that it is the duty of the police authorities, while filing the final report in the case registered under IPC, to bring it to the knowledge of the concerned First Class Magistrate about the filing of the private complaint before the Special Court, so that the Magistrate does not take cognizance of the matter, but as directed in *Pradeep Wodeyar case*, commits the case to the Special Court, which could try the IPC offence along with the private complaint upon committal. Only such a process of joint

trial would ensure that fair trial is conducted and ends of justice are met. Therefore, as and when the Magistrate is appraised of a private complaint having been filed before the Special Court, the Magistrate is bound to commit the case before the Special Court, as directed in *Pradeed Wodeyar case*, which alone would be the right manner in which the case could be dealt with.

185. As a sequitur, the police case filed under Section 379 IPC and private complaint filed under Section 21 of MMDR Act can be tried jointly in the light of Section 220 of Cr.P.C. to ensure speedy trial of offences. Therefore, Section 220 of Cr.P.C. can be taken aid to conduct a joint trial of offences under IPC and MMDR Act upon committal of the IPC offence by the Magistrate to the Special Court.

186. **Accordingly, an FIR is registered for offence under the IPC and a private complaint is filed for the offence under MMDR Act, the jurisdictional Special Court constituted under the MMDR Act shall jointly try the offences under the MMDR Act as well as the offence u/s 379 IPC so as to avoid any**

possible conflict in the decision, on the IPC offence being committed by the Magistrate to the Special Court.

REFERENCE ISSUE NO.5 :

If the Special Court alone is entitled to try the offence under the Act, can the power of compounding be given to an authorised officer or such a power should only be exercised by the Special Court.

187. Though the above reference is limited only to the power of compounding being exercisable by the particular authority, whether it is the person authorised under Section 23-A of the MMDR Act or the Court, however, a larger issue is required to be considered.

188. With regard to the power of compounding, though the issue has been raised by the Bench as to whether the power of compounding can be exercised only by the authorised person or such power should only be exercised by the Special Court, which tries the case, the answer to the same lies in Section 23-A.

189. Though the above reference of trying of the case is limited through the above reference only with regard to the private complaint u/s 22, there is no whisper about the registration of an offence under the IPC and also the triability of the said offence.

190. While the offence under Section 21 (4) is to be tried by a Magistrate, notwithstanding the complaint, that has been filed u/s 22 by the person authorised, the very same person is clothed with the power of compounding the offence, either before or after the institution of the prosecution on payment to that person, for credit to the Government of such sum as that person may specify.

191. In *Muthu* case, speaking on the compounding of the offence u/s 23-A, it has been observed as under :-

> *"11. Section 23A of the M&M Act, as stated, only speaks about the compounding of offence. Such a power can be exercised by the officer authorized under Section 22 of the M&M Act taking note of the complaint to the Court with*

respect to the offence. It can be exercised either before or after the institution of the proceedings."

192. Therefore, insofar as the compounding of the offence is concerned, it is writ large from Section 23-A (1) that the power to compound the offence is vested with the person authorised u/s 22 of the MMDR Act. Meaning thereby, the person authorised under Section 22 will have the power to compound the offence u/s 23-A (1) either before or after initiation of prosecution. No shred of power is vested with the Court to compound the offence.

193. Though the Special Court is empowered to try the offence under the MMDR Act, however, Section 23-A (1) does not clothe any power on the Special Court to compound the offence. Therefore, the power of the Special Court with reference to compounding u/s 23-A (1) is totally absent and, therefore, the Special Court has no power or control with regard to compounding the offence.

194. When the Parliament, in its wisdom has made provision for doing a particular act in a particular manner, it is needless to state and it has been the consistent view of the Courts that the Courts cannot sit over the wisdom of the Parliament in framing the law so long as the said law is in consonance with the constitutional mandate. There is no quarrel that MMDR Act and more so, Sections 21 (4), 22 and 23-A (1) are within the constitutional scheme and does not suffer the vice of any illegality or irregularity, thereby the said provisions are *intra vires* the Constitution. That being the case, vesting of power on the person authorised under Section 22 of the Act for compounding the offence u/s 23-A (1) of the MMDR Act cannot be said to be wrong or erroneous.

195. From the construction of Section 23-A (1), it is unambiguously clear that, the Parliament, in its wisdom, had vested the compounding power with the person authorised under Section 22. Therefore, there can be no doubt with regard to the authority, who is vested with the power of compounding. However, it is to be pointed out that sub-section (2) of Section 23-A makes it distinctly clear that the offence compounded under sub-section

(1), no 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.

196. It is therefore evident from sub-section (2) that the compounding pertains only to the offender and not to the offence committed. It is only the offender, who can be allowed to be released from the rigours of Section 21 (4), that too, for the offence registered under the MMDR Act and not in respect of offence registered under the IPC. The offender gets released from the clutches of the offence under Section 21 (4) and the offence under the IPC would be prosecuted irrespective of the compounding done under Section 23-A (1).

197. Even in *Muthu case*, the Bench after hearing the review, has laid down following principles of law *qua* seizure, confiscation, release of vehicle, registration of case, compounding of offences, filing of private complaint and trial of offences:-

1) The power of seizure is certainly available with ***"officer or authority specially empowered"*** *in this behalf.*

*2) It is pertinent to state here that the Bench has recognized that the power of seizure can be conferred to **any officer or authority by exercising a power of delegation.** The Bench did not exclude police personnel from the purview of "authorized officer" to exercise the power of seizure. In other words Bench did not hold that the revenue officials alone have right to exercise the power of seizure under the Act.*

3) Revenue Officials or any other Authorized Officer cannot exercise power of confiscation or disposal of any seized material and findings related to this aspect rendered in the main case had not been reviewed.

4) Confiscation is the rule and release is in consequence of adjudication. In other words, the release of seized minerals or vehicles etc., is not automatic even after compounding of offences.

5) Power of compounding can be exercised by an officer authorized under Section 22 of the Act. .

6) Effect of compounding is that the offender gets prosecution avoided qua the offence. However, the question of release or confiscation still rests with the Court

7) Finding relating to implied over ruling of Section 23A was reviewed and declared as not a correct expression of law.

8) Power of compounding cannot be exercised indiscriminately by acting as collection agent by the State Officials.

9) The loss and offences committed cannot be equated in terms of money.

10) Suggestions made to State Government to bring appropriate amendment to sensitize the issue of illicit mining.

11) Rule 36A can be invoked for levying compounding fee under Section 23A of the Act.

12) Rule 36A of TNMMCR and Section 21 of MMDR Act is not in conflict. Both the rule and act operate on different field and further held that -

- *Power of release or confiscation is not available with the authorised officer.*
- *Direction issued to State to issue circular prescribing guidelines to prevent indiscriminately exercise of power by the authorized officers.*

198. From the above principles enunciated in *Muthu case*, it is evident that even at the earliest point of time, this Court had recognized the power of the person authorised u/s 23-A (1) to compound the offence, meaning thereby, the Special Court was not invested with any power with regard to compounding of the offence. That being the case, there being no ambiguity in the MMDR Act with regard to conferment of power of compounding on the

person authorised u/s 23-A (1), there can be no different view with regard to the said power.

199. **Accordingly, the power of compounding given to an authorised officer under the MMDR Act is in consonance with the constitutional mandate and the power not being granted to the Special Court, the said Court cannot exercise such power and the power is exercisable only by the person authorised u/s 23-A of MMDR Act. Reference Issue No.5 is answered accordingly.**

200. In view of the foregoing discussions, we answer the questions referred to us, framed by the Division Bench, to give a quietus to the whole issue, as follows :-

(i) There is no embargo in bringing the police personnel within the ambit of "authorised officer empowered" u/s 21 (4), 22 and 23-A of the MMDR Act and the Government Orders in G.O. Ms. No.114, dated 18.9.2006 and G.O. Ms. No.12, dated

2.2.2009 are well within the powers and jurisdiction of the State Government.

(ii) In view of issue No.1 being held in the affirmative for bringing the police personnel within the ambit of "authorised officer empowered" u/s 21 (4), 22 and 23-A of the MMDR Act, the vehicles/materials, which have been seized by the police personnel on the basis of the authorisation granted by the Government under G.O. Ms. No.114, dated 18.9.2006 and G.O. Ms. No.12, dated 2.2.2009, which have been reiterated in G.O. Ms. No.170 dated 5.8.2020 does not suffer the vice of any illegality and, therefore, the seizure made as a consequence thereof, is wholly within the framework of Section 21 (4) of the MMDR Act.

(iii) The police personnel, who fall within the meaning of the "person authorised" under Section 23-A (1) and who happens to be the very same officer, who

has registered the FIR, there would be no impediment for the said authority to compound the offence insofar as the offence under the MMDR Act and at the same time proceed with the prosecution for the offence registered under the Indian Penal Code. in the interests of the environment as also the State, this Court suggests the Additional Chief Secretary to the Government, Natural Resources Department, in consultation with the Commissioner, Directorate of Geology and Mining to take necessary steps for making amendment to the Rules, 1959, more particularly, Rule 36-A, for obtaining expert opinion of the Director of Geology and Mines with regard to the mineral that is seized, prior to passing any orders compounding the offence u/s 23-A (1) by the person authorised u/s 22 of the MMDR Act.

(iv) ***The officer empowered under Section 21 (4), who seized the vehicle would be the best authority to file the private complaint u/s 22. However, if the authority who seized the vehicle is not empowered as the person authorised to file a private complaint u/s 22, then upon filing of report by the said authority, who seized the vehicle, the person authorised u/s 22 shall file the private complaint before the court of competent jurisdiction, within the time frame, which has been fixed in Muthu case. However, in the interest of justice and also in the interest of speedy trial, this Court suggests that the persons, who have been authorised u/s 21 (4) also be authorised u/s 22 as well so that there is no delay in the initiation of prosecution and speedy trial. The Government Orders, to that extent, shall be issued with requisite modification.***

(v) ***While the Special Court alone is entitled and empowered to try the offences under the MMDR Act, however, the power of the Special Court would be only in relation to confiscation and release of the vehicle, which has been seized and insofar as compounding of offence is concerned, it would be within the domain of the persons authorised u/s 22 of the MMDR Act, who would have authority and the Court has no role to play in the matter of compounding. Further, the Special Courts constituted under the MMDR Act shall jointly try the offences under the MMDR Act as well as the offence u/s 379 IPC so as to avoid any possible conflict in the decision.***

(vi) ***In view of the aforesaid finding of this Court with regard to joint trial by the Special Court, this Court directs the police authorities, who have registered FIR for the offence u/s 379 IPC to file the final report***

and the person authorised u/s 21 (4), who has seized the vehicle to file, private complaint before the concerned Magistrate Court/Special Court and in case the police officer has seized the vehicle u/s 21 (4) of the MMDR Act and also lodged the FIR u/s 379 IPC, to file final report and private complaint before the concerned Magistrate Court/Special Court, within a period of three months from the date of this order. Upon filing of the final report by the police authorities, the concerned Magistrate is directed to commit the case forthwith to the Special Court having jurisdiction. The Special Courts, which have received the private complaints filed by the person authorised under the MMDR Act shall take up the case along with the case committed in respect of IPC offences, if any, relating to the same offender jointly and shall complete the trial as

expeditiously as possible upon filing of private complaint/committal of the case.

201. With these answers, we return the case papers to the Registry with a direction to list the cases before the concerned Division Bench for disposal.

202. This Court places on record its appreciation for the assistance rendered by the learned Amicus **Mr.N.Ananthapadmanabhan, Senior counsel and Mr.B.Vijay, the learned counsel** for enlightening this Court with the erudite exposition of the legal position on the subject, thereby enabling this Court to render its opinion on all the facets of law relating to the issue on hand.

(G.R.S.J.) (M.D.I.J.) (K.M.S.J.)

13.06.2023

Index : Yes / No

NC : Yes / No

GLN

To

1. The District Collector
Kokkirakulam, irunelveli District
Tirunelveli.

2. The Assistant Director of Mines and Minerals,
Collector Office Compound,
Kokkirakulam, Tirunelveli District
Tirunelveli.

3. The Assistant Superintendent of Police
Nanguneri Sub Division
Nanguneri, Tirunelveli District.

4. The Sub Inspector of Police,
Munneerpallam Police Station
Munneerpallam, Tirunelveli District.

5. The Addl. Chief Secretary to Government
Home Department, Chennai 600 009.

6. The Prl. Secretary to Government
Government of Tamil Nadu
Secretariat, Chennai 600 009.

7. The Director General of Police
No.4, Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.

8. The Chief Secretary to Government

Government of Tamil Nadu Fort St. George, Chennai 600 009.

Copy to : The Registrar General, Madras High Court.

G.R.SWAMINATHAN, J.

M.DHANDAPANI, J.
AND
K.MURALI SHANKAR, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO.14341 OF 2022

Pronounced on
13.06.2023