IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

125+201+256+134

2026:PHHC:001365

Date of decision: 09.01.2026.
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(1)

CRM-M-66839-2025 (O&M)
Reserved on: 10.12.2025.

JAGDISH SINGH

...Petitioner(s)

VERSUS

STATE OF PUNJAB

...Respondent(s)

(2)

CRM-M-35908-2025 (O&M)
Reserved on: 12.12.2025.

MANPREET SINGH AND OTHERS

...Petitioner(s)

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

(3)

CRM-M-60536-2025 (O&M)
Reserved on: 12.12.2025.

NASIB CHAND AND ANOTHER

...Petitioner(s)

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

(4)

CRM-M-61811-2025 (O&M)
Reserved on: 12.12.2025.

NASIB CHAND AND ANOTHER

...Petitioner(s)

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

(5)

CRM-M-66761-2025 (O&M)
Reserved on: 16.12.2025.

SARBJIT SINGH ALIAS SARABJIT SINGH ALIAS SABHA

...Petitioner(s)

VERSUS

STATE OF PUNJAB

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Kulwinder Bhargav, Advocate,
Mr. Jashan Deep Singh Bains, Advocate, and
Mr. Robin Arora, Advocate,
for the petitioner(s) in CRM-M-66839-2025.

Mr. Mansur Ali, Sr. Advocate, with
Mr. Vaibhav Garg, Advocate, and
Ms. Amarpreet Kooner, Advocate,
for the petitioner(s) in CRM-M-35908-2025;
CRM-M-60536-2025; and CRM-M-61811-2025.

Mr. Mukesh Singla, Advocate,
(Through Video Conference)
for the petitioner(s) in CRM-M-66761-2025.

Mr. Saurav Verma, Addl. A.G. Punjab and
Mr. Mohit Kapoor, Sr. DAG, Punjab.

Mr. P.S. Ahluwalia, Sr. Advocate, (Amicus) with
Mr. Udaiveer Sidhu, Advocate,
Mr. Simarpreet Sekhon, Advocate,
Ms. Isha Mehta, Advocate, and
Mr. Akash Gahlawat, Advocate.

VINOD S. BHARDWAJ, J. (Oral)

Giving rise to a question as to whether an FIR can be quashed and/or a final report be filed by the Police for offences under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act of 1957) in light of the bar under Section 22 of the Act of 1957 and effect of Section 21(6) thereof, these five petitions are being decided by a common judgment.

2 Facts involved in the respective petitions are extracted as under:

CRM-M-66839-2025: Jagdish Singh Vs. State of Punjab.

2.1 Challenge in the above petition is to the FIR bearing No.165 dated 24.08.2020, registered under Section 21 (1) of the Act of 1957, read with Sections 279, 379 and 188 of the Indian Penal Code, 1860, Section 51(b) of the Disaster Management Act, 2005 and Section 3 of the Epidemic Diseases Act, 1897 (Challan presented for offences only under Section 21(1) of the Act of 1957), registered at Police Station Garhshankar, District Hoshiarpur, along with the final report and including the order dated 01.08.2025, whereby their application for discharge had been dismissed and charge has been framed for offences under Sections 21(1) of the Act of 1957 and Section 379 and 411 of the IPC.

2.2 The aforesaid FIR had been registered on the allegation that while patrolling in the area of City Garhshankar, an information was received

regarding certain tippers illegally loaded with sand having been stopped near the Anandpur Sahib Road. Acting upon the said information, the police seized the tipper bearing registration No. PB-09-X-6953, which was found to be loaded with sand and was being driven by the petitioner herein. The ownership of the said tipper was disclosed to be that of one Karnail Singh. The petitioner failed to produce any valid permit or authorization to carry out mining operations or to transport sand, hence, the FIR was registered. The petitioner was arrested and was eventually released on regular bail. Investigation was completed whereupon final report under Section 173 Cr.P.C. was filed on 07.12.2022 for commission of offence only under the Act of 1957. Thereafter, the petitioner moved an application seeking discharge which was dismissed. Charges were framed not only for offence under the Act of 1957 but also for offences under Sections 379 and 411 of the Indian Penal Code.

CRM-M-35908-2025:
MANPREET SINGH AND OTHERS VS. STATE OF PUNJAB AND ANOTHER

3.1 Challenge in the case is to the FIR No.0043 dated 13.06.2024, registered under Section 21(1) of the Act of 1957 at Police Station Talwara, District Hoshiarpur, along with the final report filed under Section 173 Cr.P.C.

3.2 The above case was registered on the complaint of Sandeep Kumar, Sub Divisional Officer cum Assistant District Mining Officer, Sub Division, Dasuya, made to the effect that illegal mining activities were being carried out near Master Stone Crusher situated in village Alera, over the Panchayat land. Upon verification of the complaint, it was found that the owner of the stone crusher had undertaken illegal mining operations in excess

of and also in violation of the permissions granted, thereby attracting the penal provisions of the Act of 1957. Upon completion of the investigation, the police filed the final report on 27.04.2025, the quashing whereof is sought in the present case.

CRM-M-60536-2025:
NASIB CHAND AND ANOTHER VS. STATE OF PUNJAB AND ANOTHER

4.1 Seeking quashing of FIR No.0133 dated 29.08.2023, registered under Section 21(1) and 4(1) of the Act of 1957, at Police Station Nangal, District Rupnagar along with the final report filed for offences under the Act of 1957 as well as under Section 379 of the IPC as well as the order dated 30.04.2025 framing charge against the petitioners, Nasib Chand and Sohan Singh, the instant petition has been filed.

4.2 As per the allegations, during a surprise inspection conducted at the Swan river (Nadi) in village Bhalan, three tippers were found engaged in illegal mining activities and were sought to be seized at the spot. On noticing the presence of the mining team, the operator of the machinery and the drivers of the tippers fled from the site along with the machinery. However, the porcelain machine was stopped at a distance of approximately 100 to 120 meters from the Swan river. Upon further inspection, it was found that an illegal mining, to the extent of nearly 25,000 cubic feet, had been carried out at the site. Three tippers which were found, were without number plates and were also seized from the spot. Upon completion of the investigation, the final report was filed and charges were subsequently framed under above offences.

CRM-M-61811-2025:

NASIB CHAND AND ANOTHER VS. STATE OF PUNJAB AND ANOTHER

5.1 The above petition has also been filed by Nasib Chand son of Ram Lal and Ram Dass son of Karam Chand (petitioner Nasib Chand is also an accused in CRM-M-60536 of 2025 above) seeking quashing of the FIR bearing No.0138 dated 12.09.2023, registered under Section 21(1) and 4(1) of the Act of 1957 at Police Station, Nangal, Roparnagar, along with the final report and the order framing charge.

5.2 The above FIR was got registered by one Manreet Singh, Mining Inspector care of Sub Divisional Officer, Nangal, who submitted a complaint to the effect that during inspection and checking of stone crushers, evidence of unauthorized and illegal mining was found on land situated near Bhalla Stone Crusher and Shri Ram Crusher to the extent of approximately 6,25,000 cubic feet. The final report was filed on completion of investigation and eventually charge was framed. Aggrieved thereof, the instant petition has been filed.

CRM-M-66761-2025: SARBJIT SINGH ALIAS SARABJIT SINGH ALIAS SABAHA VS. STATE OF PUNJAB

6.1 Seeking Quashing of FIR No.42 dated 13.05.2022, registered under Section 21(1) of the Act of 1957, at Police Station Targarh, District Pathankot along with all the consequential proceedings including trial pending in case bearing No.CHA/44/2025 titled as State of Punjab Vs. Sarabjeet Singh, is prayed for.

6.2 The FIR in question had been registered on the complaint of Sukhdeep Singh Junior Engineer cum Mining Inspector, Kathua Sub Division

made to effect that illegal mining was noticed in the area of Chak Kusalya in the Ravi River. Investigation was conducted by the police officials and a final report filed. The application for discharge submitted by the petitioner was dismissed and charge was framed for commission of offence under Section 21(1) of the Act of 1957.

6.3 Mr. P.S. Ahluwalia, Senior Advocate, had been appointed as an *Amicus* to assist the Court.

STATE REPLY

7.1 The respondent-State had filed its status report in the matter of Manpreet Singh and others Vs. State of Punjab bearing No.CRM-M-35908 of 2025 wherein they have defended their action.

7.2 A separate reply had also been filed by way of an affidavit of Sandeep Kumar, Sub Divisional Officer-cum-District Mining Officer in CRM-M-35908-2025 defending the FIR that had been registered and reliance has been placed on Section 21(6) of the Act of 1957. The relevant extract thereof reads thus: -

> *4. That the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is not maintainable. The FIR No. 0043 dated 13.06.2024 (Annexure P-1) registered under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) has been lawfully lodged after due compliance of procedure. The petitioner seeks quashing of proceedings without any valid legal ground, which is impermissible in law. It is well settled by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, AIR 1992 SC 604, and reiterated in Neeharika infrastructure Pvt. Ltd. v. State of Maharashtra, 2021 SCC OnLine SC 315, that inherent jurisdiction for quashing FIRs must be exercised sparingly, only*

in the rarest of rare cases. The present case does not fall within any exceptional category.

5. That moreover, petitioner has deliberately concealed material facts relating to illegal mining, actual facts of the case are that a video complaint of Manoj Kumar having Mobile No. 8264511314 resident of village Palahar, Talwara had been received to Sandeep Kumar, Sub Divisional Officer-cum-Assistant District Mining officer, Dasuya Water Drainage-cum-Mining Sub Division, Dasuya i.e. respondent no. 2 and while taking action on it, field staff, police party and officer of revenue department inspected the spot under leadership of Sub Divisional Officer, Mining Sub Division Dasuya i.e. respondent no. 2. The site of the spot is situated adjacent to Master Stone crusher village Alera and its coordinates are 31.873446, 75.947841. The mining has been done from 2 killas of land at the site. Ex. Sarpanch village Amroh, Samiti Member Naresh Kumar son of Late Sh. Ranjit Singh and Suresh Kumar son of Sh. Jagdish Ram informed that said mining has been done by Master Stone Crusher village Alera and said land is panchayat land. Therefore, after conducting investigation, appropriate legal action under section 21 (1) of Mines and Minerals Act, 1957 was initiated against owner of above said land, owner of Master Stone crusher and accused guilty of mining.

6. The inspection reports, and evidence collected clearly establish the violation. Suppression of facts disentitles the petitioner to any equitable relief. That FIR No. 0043 dated 13.06.2024, registered at Police Station Talwara, District Hoshiarpur, Punjab, under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act"), was registered strictly in accordance with law, following due inspection, verification by officials of the Mining Department

and Police authorities. The FIR discloses a clear cognizable offence under Section 21(1) of the MMDR Act.

7. That the petitioners' contention that the Police had no authority to register FIR No. 0043 is legally unsustainable.

Section 21(6) "Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub-section (1) shall be cognizable".

Section 22 *of the MMDR Act expressly makes offences cognizable, authorising Police to register FIRs. Section 22, MMDR Act, 1957:*

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

A bare reading shows that Section 22 creates a bar only at the stage of cognizance by the Court, not at the stage of registration of FIR or investigation by the Police. It only bars the Court from taking cognizance except on a complaint by the authorised officer; it does not restrict Police from registering FIRs and investigating cognizable offences. The Hon'ble Supreme Court in State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, has categorically upheld this principle.

8. That it is most respectfully submitted that the petitioners have failed to establish any ground whatsoever warranting interference by this Hon'ble Court in exercise of its inherent jurisdiction under Section 482 CrPC (Section 528 BNSS). The impugned FIR (Annexure P-1) was registered on the basis of a

joint inspection conducted by the Mining Department and Police authorities, which clearly revealed large-scale illegal excavation, lifting, and transportation of minor minerals from an area falling outside the leasehold premises of M/s Masters Stone Crusher, of which the petitioners are partners. The offence was thus cognizable and punishable under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, read with Sections 379 and 120-B of the Indian Penal Code (now Section 303 and 320 of BNS respectively).

9. That the reliance placed by the petitioners upon Section 22 of the MMDR Act is wholly misconceived and misplaced. The said provision merely restricts the taking of cognizance by the Court except upon a written complaint by an authorised officer and does not bar the registration of an FIR or investigation by the police. This legal position stands conclusively settled by the Hon'ble Supreme Court in State (NCT of Delhi) v. Sanjay (2014) 9 SCC 772, and consistently followed thereafter, holding that police authorities are competent to investigate offences involving theft and illegal transportation of minerals, even when such acts simultaneously constitute a violation under the MMDR Act.

10. That it is further submitted that the impugned police report under Section 173 Cr.P.C. (Annexure P-2) has been submitted after completion of a fair, transparent, and lawful investigation, supported by seizure memos, inspection reports, witness statements, and departmental verification. The material collected during investigation establishes a clear prima facie case against the petitioners. It is settled law that at the stage of quashing, this Hon'ble Court is not required to evaluate the sufficiency or correctness of evidence, nor to conduct a mini-trial. The factual defences raised by the petitioners such as the issue of demarcation, ownership, or the validity of site reports are all

matters of evidence which can only be adjudicated during trial and not at this preliminary stage.

11. That the argument of the petitioners that only proceedings under Rule 85(5) of the Punjab Minor Mineral Rules, 2013 could have been initiated, is legally untenable. The said Rule pertains merely to assessment and recovery of royalty or price of illegally extracted minor minerals and operates independently of the penal provisions under the MMDR Act. Administrative or fiscal remedies do not exclude criminal prosecution where the act complained of constitutes an offence punishable under law. The proceedings under the MMDR Act and the Rules are complementary and not mutually exclusive.

12. That it is evident that the present petition is a clear attempt by the petitioners to misuse the extraordinary jurisdiction of this Hon'ble Court to pre-empt the lawful process of investigation and trial. The allegations of mala fides or procedural irregularities are vague and baseless, unsupported by any material. The petitioners have sought to give a civil colour to acts that are manifestly criminal in nature, involving illegal extraction and removal of public resources, causing financial loss to the State exchequer.

13. That the trial proceedings are lawfully ongoing. Challan was presented on 27.04.2025, and prosecution evidence is pending. Once charges are framed, interference by this Hon'ble Court under Section 482 CrPC (Section 528 BNSS) is not maintainable except EATUNER in the rarest of rare cases, which is not made out here. The proper remedy for the accused is to contest the trial.

14. That in view of the above, the FIR No. 0043 dated 13.06.2024 the pending trial proceedings are perfectly lawful, valid.

8 Learned counsel for the parties are *ad idem* that since the issue involved in these petitions are primarily legal, the factual aspects need not be gone into, as the same would give rise to disputed questions of fact.

ARGUMENTS ON BEHALF OF THE PETITIONERS

9.1 Learned counsel appearing on behalf of the petitioner(s) contend that the FIR could not have been registered by the police in view of the specific prohibition under Section 22 of the Act of 1957. It is submitted that only a complaint could have been filed in the matter by a person authorized by the Government in terms of Section 22 of the Act of 1957. It is contended that since cognizance of the offence could have been taken only upon a complaint filed by an authorised person, the trial Court has erred in taking cognizance of the offence and framing the charges. The order dismissing the application for discharge and thereafter framing of a charge is hence illegal being without jurisdiction, hence, non est and unsustainable in the eyes of law.

9.2 An additional argument has been raised on behalf of counsel for the petitioners that in certain cases, charges under Section 379 of the Indian Penal Code have also been framed. It is contended that the offence under Section 379 IPC is triable only by a Court of Magistrate, however, the jurisdiction of the Court of Sessions is attracted by virtue of the notification issued by the Government of Punjab in respect of offences under the Act of 1957, notifying the Court of Sessions as a Special Court under Section 30-B of the Act of 1957.

9.3 In support of their case, counsel for the petitioners have placed reliance on the judgment of ***State of NCT of Delhi Vs. Sanjay, reported as***

2014 (9) SCC page 772, wherein Section 22 of the Act of 1957 has been interpreted and it was held that a person cannot be prosecuted except on a complaint made by an authorized officer. Relevant extract thereof, as relied by the petitioner(s), are reproduced as under: -

> *68. 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 authorized 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 authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist 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 sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.*
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> *69. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is laible to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.*
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> *xxx xxx xxx*
>
> *72. 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."

9.4 Reliance has also been placed on the judgment of the Supreme Court in the matter of ***Jayant Vs. State of Madhya Pradesh, reported as 2021 AIR SC, 496: 2021 (2) SCC Page 670,*** relevant extracts whereof read thus: -

10. Having heard learned counsel for the parties and having perused the relevant provisions of the law as also the judicial pronouncements, we are of the view that the High Court has not committed any error in not quashing the order passed by the learned Magistrate and not quashing the criminal proceedings for the offences under Sections 379 and 414. It is required to be noted that the learned Magistrate in exercise of the suo motu powers conferred under Section 156(3), Cr.P.C., 1973 directed the concerned Incharge/SHO of the police station to lodge/register the crime case/FIR and directed initiation of investigation and directed the concerned Incharge/ SHO of the

police station to submit a report after due investigation.

Applying the law laid down by this Court in the cases referred to hereinabove, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged offences attracting bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173, Cr.P.C., 1973

10.1 At this stage, it is required to be noted that as per Section 21 of the MMDR Act the offences under the MMDR Act are cognizable.

10.2 As specifically observed by this Court in the case of Anil Kumar (supra), 'when a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., 1973 obviously, he has not taken cognizance of the offence and, therefore, it is a precognizance stage and cannot be equated with post cognizance stage'.

10.3 Even as observed by this Court in the case of R.R. Chari (supra), even the order passed by the Magistrate ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. As observed by the Constitution Bench of this Court in the case of A.R. Antulay(supra), filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. 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."

9.5 Reliance is also placed on the judgment of a Coordinate Bench of this Court in the matter of ***Kulwant Kaur Vs. State of Punjab, CRM-M-49618 of 2017 decided on 15.03.2024***. The relevant extract thereof reads thus: –

10. This Court is of the view that the very registration of FIR (supra) is bad in the eyes of law as per the statutory provisions of the MMDR Act. Cognizance of an offence under the said Act can only be taken up on a criminal complaint filed by the officer authorized under the MMDR Act in this regard. In view of the above discussion, this Court is of the considered opinion that the police has no power either to investigate, prosecute or deal with any offence either under the MMDR Act.

11. In view of the discussion above, the present petition is allowed and FIR No.178 dated 25.10.2017 registered under Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter MMDR Act) at Police

Station Ajnala, District Amritsar (Rural) and all subsequent proceedings arising therefrom are hereby quashed. Hence, the present petition is disposed of accordingly."

9.6 Further reliance is placed on the judgment in the matter of ***Jagjit Singh Vs. State of Punjab, passed by this Court in CRM-M-19534-2014 decided on 10.11.2014, reported as 2014 (5) Law Herald page 4503***. The relevant extract thereof reads thus: -

A perusal of Section 22 of the Act brings out that an offence punishable under Section 21 of the Act is a non-cognizable offence. To put it otherwise cognizance of an offence punishable under Section 21 of the Act can be taken only on complaint in writing to be filed by the authorised person. To clarify further, an F.I.R cannot be recorded in respect of an offence punishable under Section 21 of the Act. In Harmela Ram Versus State of Haryana (supra), a similar situation arose and this Court quashed the FIR and proceedings arising therefrom by observing that the offence being non-cognizable, FIR in the matter could not be recorded and continuance of the proceedings arising therefrom would be an abuse of process of law and the Court. It has been contended on behalf of the respondent-State that offence of Section 379, IPC, being a cognizable offence, FIR has been rightly recorded even though another offence which happens to be non cognizable is involved. I regret my inability to subscribe to the view put forth on behalf of the respondent-State. It is not in dispute that offence of Section 379, IPC, is a simple as offence of theft and the theft of sand or other minerals is governed by the provisions of the Act, which is a special statute. The matter being regulated by a special statute, provisions of general law have to give way to the provisions of said Act. This was so held by this Court in M/s Mahalakshmi Spinners Ltd. Versus State of

Haryana, 2007(1) R.C.R.(Civil) 381, Raman Kapila and another Versus State of Punjab 2012(4) R.C.R.(Criminal)634 and Rakesh Kumar Versus State of Haryana 2011(3) R.C.R(Criminal) 629. Nothing to the contrary has been shown during the course of hearing. That being so, the offences of Section 379, IPC, could not be included in the First Information Report and allowing the proceedings under that provision, would, in disputably amount to an abuse to the process of law and the Court and shall be vexations. The consequence that follows is that the only offence that could be said to have been committed by the petitioners under falls Section 21 of the Act which would be a non-cognizable offence in terms of Section 22 of the Act and, as such, the FIR recorded in the matter deserves to be quashed. In the consequence, I accept the petition and quash the F.I.R No.9 dated 17.02.2013 recorded under Section 379, IPC, and Section 21 of Mines and Minerals (Regulation & Development) Act, 1957, (Annexure P1) with all the proceedings emanating therefrom."

9.7 Reliance is also placed on the judgment of the Supreme Court in the matter of ***Jeewan Kumar Raut Vs. Central Bureau of Investigation, reported as 2009(3) RCR (Crl.) page 586***, pertaining to the Transplantation of Human Organs Act, 1994, containing similar provisions. The relevant extract thereof reads thus: -

15. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under

any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.

16. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorized officer. Nobody else could do it. For the aforementioned reasons, the officer incharge of the Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

17. The respondent has been constituted under the Delhi Special Police Establishment Act, 1946. In terms of the provisions of the said Act, the authorities specified therein could make investigation in connection with a complaint. The mode and manner in which the investigation could be carried out have been laid down in the Act and/ or the manual framed thereunder.

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20. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of Section 167 of the Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of

> *conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO."*

9.8 Reliance is also placed on similar orders passed by certain other High Courts as well. The same are, however, not being extracted to avoid repetition.

ARGUMENTS ON BEHALF OF THE RESPONDENT-STATE

10.1 On the other hand, counsel for respondent-State has also placed reliance on the judgment of the Supreme Court in the matter of ***State of NCT of Delhi Vs. Sanjay, reported as 2014 (9) SCC Page 772***, to defend the State action. They further submit that the judgments passed by the Coordinate bench of this Court in the matter of ***Kulwant Kaur*** (supra) as well as ***Jagjit Singh*** (supra) have not taken into consideration the judgment in the matter of ***Sanjay Kumar*** (supra) and have wrongly placed reliance on the judgment of ***Jeewan Kumar Raut*** (supra).

10.2 It is submitted that in so far as the judgment in the case of ***Kulwant Kaur*** (supra) is concerned, the Hon ble Single Judge has made a reference to Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, however, the effect and import of Section 21(6) of the said Act have not been adverted to or analysed. On this premise, it is contended that the said judgment would be rendered per incuriam for having failed to take a material statutory provision into consideration. A similar

submission is advanced with respect to the judgment in the matter of ***Jagjit Singh*** (supra). It is contended that while Section 21 of the Act of 1957, including sub-section (6) thereof, stands reproduced in the said judgment, there is no discussion, interpretation, or construction of the said provision, nor any examination or consideration of its impact on Section 22 of the Act of 1957.

10.3 It is contended that in view of the settled position in law, the FIRs in question could have been duly got registered and the final report could have been filed by the police authorities.

10.4 It is contended that the allegations, as borne out from the record, clearly disclose the commission of cognizable offences in the present cases and that the bar under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 operates only at the stage of taking cognizance by the Court and not at the anterior stage of registration of the FIR or the conduct of investigation by the police. It is argued with vehemence that the FIRs had been registered on the basis of the reports submitted by the police officials/authorized officials of the Department of Mining reporting illegal excavation, lifting and transportation of minor mineral from the river beds/areas falling outside the leased premises.

10.5 It is argued that specific objections raised by the petitioner(s) while seeking discharge were dealt with and rejected by the Courts and charges were framed thereafter, hence, prima facie case was found to be made out at the time of framing of the charge. It would thus not be appropriate to go into the relevance and merit of the evidence collected as the same would amount to judging the evidentiary value of the material collected during the

course of investigation. The same would give rise to disputed questions of fact that should not be gone into by this Court, at this stage and should be left to trial.

SUBMISSIONS BY THE AMICUS

11.1 Mr. P.S. Ahluwalia, Senior Advocate, (learned Amicus) submits that similar provisions exist in a number of statutes and such analogous provisions have been examined, interpreted and applied to by the Courts.

11.2 Reference is made to the scheme of offences against public tranquility under the Indian Penal Code, 1860, and to the analogous procedural bar contained in Section 195 of the Code of Criminal Procedure, 1973. Reference is also drawn to the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, inasmuch as Sections 27 and 28(1) thereof incorporate provisions of a similar nature, prescribing a specific mode for initiation of proceedings and taking of cognizance.

11.3 He also makes a reference to the judgment of the Division Bench of the Allahabad High Court in the matter ***M/s Maa Vaishno Traders Vs. State of Uttar Pradesh and others, reported as 2023 NCAHC 175287 passed in Criminal Misc. Writ Petition No.10716 of 2023 decided on 05.09.2023***. The relevant paragraphs of the same are extracted as under: -

> *10. The offences alleged against the petitioner are under four enactments, The Indian Penal Code, The Prevention of Damage to Public Property Act, 1984, The Mines and Minerals (Development and Regulation) Act, 1957 and the U.P. Minor Minerals (Concession) Rules, 2021.*
>
> *xxx xxx xxx*

14. The allegation in the FIR is that mining has been carried out in an area beyond the lease granted to the petitioner. It is therefore, an offence under Section 4(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act, 1957"), which reads as follows:-

Section 4. Prospecting or mining operations to be under licence 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 licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Explorations and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013) and any such entity that may be notified for this purpose by the Central Government."

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

(2) No [reconnaissance permit, prospecting licence or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18, [undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease."

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16. Even more importantly sub-section 6 of Section 21 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of the 1974), an offence under sub-section 1 shall be cognizable."

17. This subsection 6 has been incorporated by Act No.37 of 1986 w.e.f. 10.02.1987.

18. Section 22 of this Act of 1957 provides that no Court shall take cognizance of any offence punishable under this Act or any Rule therein except on a complaint in writing by a person authorized in this behalf by the Central Government or State Government.

19. It would be relevant to note that Section 22 is a provision, which has existed in the Act since its promulgation in the year 1957. Sub-section 6 of Section 21, noticed above, has been incorporated w.e.f. 10.02.1987.

20. Under the circumstances, therefore, Section 22(6) is an exception to the general provision mentioned Section 22, regarding offence under the Mines and Minerals (Development and Regulation) Act, 1957. The offences alleged under the

impugned FIR are under Section 4(1) and 4(1-A) of the Act 1957. The same therefore, are cognizable offences in view of Section 6 of Section 21. Therefore, the petitioner cannot derive any benefit from Section 22 of the Act and an FIR with regard to an offence under Section 4(1) or 4(1-A) of the Act can be lodged, as they are cognizable offences in view of Section 21(6).

11.4 Reference is also made to judgment rendered by a Coordinate Bench of this Court passed in the matter ***of Sukhdev Singh Vs. State of Punjab, bearing CRM-M No.36469-2019 decided on decided on 13.6.2024***.

The relevant extract thereof reads thus:

(14). Section 22 of the Act of 1957, which is necessary in the context of the present dispute, is reproduced as under:-

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

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(22). I am of the considered view after carefully going through the judgement of the Supreme Court rendered in Jayant etc and State of NCT Delhi (supra) that registration of the FIR and further investigation in the matter by the police is not barred by any provisions of Act of 1957 including Section 22 thereof even if the offence under IPC is not there but only under the Act of 1957 is involved. The bar is only qua taking of cognizance as per Section 22 of the Act of 1957 and therefore, it would be of vital importance to notice that when or at what stage of the case it can be said that the Court has taken cognizance of the offence. In normal criminal parlance it is taken that cognizance of the offence starts when the Court applies its mind to proceed further

against an accused but this view was delineated by the Hon'ble Supreme Court in Naryandas Bhagwandas Madhavdas Vs. State of West Bengal, AIR, 1959, SC-1118", wherein it was said that taking of cognizance of an offence would depend upon the facts and circumstances of each case and it is only when a Magistrate applies its mind for proceedings under Section 200 Cr.P.C or under Chapter XVII then it can positively be stated that he had applied his mind therefore had taken cognizance. Though there is no defining of the word as to when the cognizance is considered to have been taken in the Cr.P.C neither there is any intend to define by the legislation but it can be clearly seen that any Magistrate had taken cognizance of an offence under Section 190 (a) of Cr.P.C he must not have applied its mind to the contents of complaint/case/report but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provision of Chapter XIV i.e. Section 200 Cr.P.C and thereafter, sending a report under Section 202 Cr.P.C.

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(25). Therefore, the position is that though in respect of an offence under the Act of 1957, the FIR can be registered and investigation can be conducted; however, cognizance would be taken of the complaint by one person only as mentioned in Section 22 thereof. In the case in hand when the FIR was got registered, the stage might not have reached for lodging of the complaint since, it was under the consideration under the Act of 1957.

(26). In the light of the above discussion and in view of the various judicial pronouncement by the Hon'ble Apex Court from time to time has hold that FIR even for the offence committed under the Act of 1957 can be registered and investigated by the Police, whereas cognizance of the same can be taken only on the complaint presented by the authorized officer as stipulated under

Section 22 thereof. Even a report under Section 173 Cr.P.C is to be filed once an FIR is registered but the same should be along with the complaint presented by the Competent Authority under Section 22 of the Act of 1957.

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(28). Hence, the registration of the FIR and subsequent conduct of investigation along with final report submitted to the Court under Section 173 Cr.P.C is though held to be legal but proceedings beyond the stage of taking cognizance are hereby ordered to be quashed. The trial Court is at liberty to proceed the trial after taking cognizance of the complaint if any made by the authorized officer under Section 22 of the Act of 1957.

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(35). There is no dispute to the settled proposition of law that taking cognizance is judicial application of mind to the contents of the complaint/report for the first time as was enunciated in R.R. Chari Vs. State of Uttar Pardesh-AIR 1951 SC207 and Bhushan Kumar and others Vs. State (NCT of Delhi) and another - (2012) 5 SCC 424. Cognizance is an act of the Court which has not been defined in Cr.PC and for this reason a look needs to be made at certain provisions of Chapter XIV of Cr.PC, which deals with conditions requisite for initiation of proceedings. Section 190 thereof empowers a Magistrate to take cognizance upon receiving a police report of such facts to which he applies his mind and if he is of the opinion that there is sufficient ground for proceeding he shall proceed further by issuing warrants to the accused. This is the stage when he applies his mind which could be conclusively said to be cognizance taken by the Magistrate. In this regard, observations made by the Apex Court in "S.K. Sinha, Chief Enforcement Officer Vs. Video Con International and Ors." (2008) 2 SCC 492 could be quoted hereinbelow:-

19. The expression "cognizance" has not been defined in

the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

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(38). In view of the case law discussed hereinabove and examination of facts and material on record, I without any hesitation hold that the cognizance taken by the Magistrate in FIR No.133 dated 16.08.2014, Police Station Kurali, SAS Nagar (Mohali) suffers from illegally since it can be taken only on a complaint filed by the authorized officer as stipulated in Section 22 of the Act of 1957. Hence, the proceedings only from the date of taking cognizance by the trial Court in FIR No.133 dated 16.08.2014, Police Station Kurali, SAS Nagar (Mohali) are hereby ordered to be quashed since there is no bar for registration of FIR and conducting of investigation by the police as per Section 22 of the Act of 1957.

11.5 Reference is also made on the judgment of the Supreme Court in the matter of ***Devendra Kumar Vs. The State (NCT of Delhi and another) reported 2025 INSC 1009***. The relevant paragraphs are extracted as under: -

> *51. A plain reading of Section 195 of the Cr.P.C. would indicate that no Court can take cognizance of an offence punishable under Section 186 of the I.P.C., except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. The opening words of the Section are "No Court shall take cognizance), and consequently, the bar created by the provisions is against taking of cognizance by the Court. There is no bar against the registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of the investigation, as contemplated by Section 173 of the Cr.P.C.*
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> *xxx xxx xxx*
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> *55. In **State of Punjab v. Raj Singh reported in AIR 1998 SC 768**, this Court further stated that Section 195(1)(b)(ii) of the Cr.P.C. cannot be seen as prohibiting the entertainment of, and investigation into the offence(s) by the police. The bar comes into operation only when the Court intends to take cognizance of the offence under Section 190 Cr.P.C. In other words, the statutory power of the police to investigate under the Cr.P.C. is not in any way controlled or circumscribed by Section 195 Cr.P.C. The legal position was elaborated in the following words: -*
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> > *"2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. Lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain*

reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) Cr. P.C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C. [...]"

(Emphasis supplied)

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Conclusion

59. We may summarize our final conclusion as under:

(i) Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of

offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straight-jacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr.P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the Cr.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195. Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all depend on the facts of each case.

(vi) Sections 195(1)(b)(1)(i) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr.P.C. is followed.

60. In view of the aforesaid, we dispose of this petition leaving it open to the petitioner to raise the contention as regards the bar of Section 195 of the Cr.P.C. before the trial court if at all, at the end of the investigation, chargesheet is filed for the offences enumerated above in the FIR."

11.6 He further submits that a Division Bench of this Court in the matter of ***Hardeep Singh and another vs. State of Haryana and others, reported as 2014 SCC OnLine Punjab and Haryana, page 25360***, which is in relation to the provisions under the Pre-Conception and Pre-Natal

Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, has held that the FIR cannot be quashed solely on the ground that the Court cannot take cognizance of the offence except on a complaint submitted by the appropriate authority. The relevant extract thereof reads thus: -

> *1. The petitioners who are doctors have filed the present petition under section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) seeking quashing of FIR No.53 dated 20.1.2014 (Annexure P-1) registered against them for the offences punishable under Sections 4, 5 and 6 of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ('Act' for short) and Rules 9 (4) and 9 (6) of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 ('Rules for short) registered at Police Station Civil Lines, Karnal. The case has been registered against the petitioners on the basis of a letter dated 19.1.2014 addressed by the District Appropriate Authority (Preconception and Prenatal Diagnostic Techniques)-cum-Civil Surgeon, Karnal (Appropriate Authority for short) to the SHO, Police Station Civil Lines. Karnal.*
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> *xxx xxx xxx*
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> *10. According to the petitioners, they had not committed any offence and rather being renowned doctors had contributed to the society in the field of health by adhering to the law. A reference has been made to Section 28 of the Act and on the strength of the same, it is submitted that only a complaint could be filed and there is no provision under the Act for registration of an FIR; besides, the said provision envisages that a show cause notice of fifteen days is mandatory to a person sought to be prosecuted.*
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> *xxx xxx xxx*
>
> *The learned Single Judge considered the matter and was*

of the view that two sections of the Act i.e. one saying that the offences under the Act are cognizable and the other saying that cognizance of the offence could be taken on a complaint made by the Appropriate Authority would require determination by a Larger Bench on the following legal points:-

(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?

(2) Whether the report under section 173 CrPC, 1973 along with the complaint of an Appropriate Authority can be filed to the Court?

(3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?

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22. The provisions of Section 28 of the Act envisage that no Court is to take cognizance of offence under the Act except on a complaint made by the persons enumerated in clause (a) thereof. Besides, clause (b) envisages that a complaint may also be made by a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court.

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Cognizance in respect of an offence under Section 188 IPC in view of section 195 (1) (a) (1) CrPC, 1973 can be taken on a complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or some other Court to which that Court is subordinate. It was held by the Division Bench of this Court that investigation can be carried out

by the police on a First Information Report in respect of a cognizance offence. The police could investigate into the offence under Section 188 IPC being a cognizable offence but the Court could not take cognizance except on a complaint of a public servant.

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49. In the circumstances, it may be noticed that in fact the taking of cognizance of the offence under the Act can be said to be barred except on a complaint made by the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be or the Appropriate Authority, or a person who has given not less than fifteen days' notice in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court as provided for in terms of Section 28 of the Act. However, the offences under the Act being cognizable, non- bailable and non-compoundable in terms of Section 27, the investigation of the same by the police would not per se be barred.

50. In the present case, there is no proceeding pending in any Court at this stage. In fact in the reply that has been filed by the State, it is stated that the matter is still under investigation and therefore, the petition for quashing the FIR is not maintainable. Therefore, the stage for taking cognizance of the offence by the Court has not yet reached. The taking of cognizance of the offence by the Court is normally when the Court applies its mind to the facts of the case, which is primarily at the stage of framing charges; can be registered and investigation conducted; however, cognizance can only be taken on the complaint of any of the persons as mentioned in Section 28 of the Act. The stage for filing the complaint has not yet reached in the present case as the matter is stated to be still under investigation, Therefore, at

this stage the FIR is not liable to be quashed on the ground that the Court cannot take cognizance except on the complaint in writing of the Appropriate Authority.

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69. In the circumstances, the questions as formulated in the reference are answered in the following manner, that:-

(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police: however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act

(2) A report under section 173 CrPC, 1973 along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.

70. The matter shall be placed before the learned Single Bench for further contention, if any, raised by the petitioners."

11.7 Reliance is also placed on the Division Bench judgment of this Court in the matter of ***Jai Singh Vs. The State of Punjab, 2010 (1) RCR (Crl.) page 350***, wherein reliance had been placed by the Division bench on the judgment in the matter of ***State of Punjab Vs. Raj Singh and another,***

reported as 1998(1) RCR (Crl.) Page 576. The relevant extract thereof reads thus: -

> *18. Thus, we are of the opinion that the investigations can be carried out by the police on a First Information Report in respect of a cognizable offence. The police could investigate into the offence under section 188 of the Indian Penal Code being a cognizable offence but the Court could not take cognizance except on a complaint of a public servant. The process adopted by the respondent is in tune with such interpretation. The bar under section 195(1)(a) of the Code is only against the Court taking cognizance of the matter except on a complaint by a public servant. In the instant case, a public servant, in fact, moved the Court to take cognizance of the matter and, therefore, it cannot be said that there is any infraction of the provisions of Section 195(1)(a) of the Code.*

11.8 He has also referred to three judges' judgment of the Supreme Court in the matter of ***Pardeep S. Wodeyar Vs. State of Karnataka, reported as 2022 (2) RCR (Crl.) 359,*** arising out of ***Criminal Appeal No.128 of 2021 decided on 29.11.2021***. The relevant extract thereof read thus: –

> ***C.6 Authorised person' and Section 22 of MMDR Act.***
>
> *76. 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.*
>
> *77. In State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, 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 from the authorised person under Section 22 of the MMDR Act. Justice MY 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."

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."

11.9 He also refers to the judgment in the matter of ***Jayant Vs. State of Madhya Pradesh, reported as AIR 2021 SC page 496.*** The relevant extract of the same reads thus: -

> *3.3 That thereafter the private appellants and others approached the High Court to quash the aforesaid FIRs registered against them for illegal mining/transportation of sand by submitting the applications under Section 482, Cr.P.C., 1973. It was mainly contended on behalf of the private appellants and other violators that in view of Bar under Section 22 of the MMDR Act, the order passed by the learned Magistrate directing to register the FIRs is unsustainable and deserves to the quashed and set aside. It was also contended on behalf of the private appellants and other violators that once there was compounding of offence in exercise of powers under Rule 53 of the 1996 Rules and the violators paid the amount determined by permitting them to compound the offence, thereafter the Magistrate was not justified in directing to initiate fresh proceedings which would be hit by the principle of "double jeopardy". That by the impugned common judgment and order, the High Court has dismissed all the aforesaid applications relying upon the decision of this Court in the case of Sanjay (supra).*
>
> *xxx xxx xxx*
>
> *7.4 Thus, as held by this Court, the prohibition contained in Section 22 of the MMDR Act against prosecution of a person except on a written complaint made by the authorised officer in this behalf would be attracted only when such person is sought to be prosecuted for contraventions of Section 4 of the MMDR Act and not for any act or omission which constitutes an offence under the Penal Code.*

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8. However, it is required to be noted that in the case of Sanjay (supra), this Court had no occasion and/or had not considered when and at what stage the bar under Section 22 of the MMDR Act would be attracted. The further question which is required to be considered is, when and at what stage the Magistrate can be said to have taken cognizance attracting the bar under Section 22 of the MMDR Act?

8.1 While considering the aforesaid issue, Section 22 of the MMDR Act is required to be referred to, which is as under:

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Reading the aforesaid provision would show that cognizance of any offence punishable under the MMDR Act or the Rules made thereunder shall be taken only upon a written complaint made by a person authorised in this behalf by the Central Government or the State Government. Therefore, on a fair reading of Section 22 of the MMDR Act, the bar would be attracted when the Magistrate takes cognizance.

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10. Having heard learned counsel for the parties and having perused the relevant provisions of the law as also the judicial pronouncements, we are of the view that the High Court has not committed any error in not quashing the order passed by the learned Magistrate and not quashing the criminal proceedings for the offences under Sections 379 and 414. It is required to be noted that the learned Magistrate in exercise of the suo motu powers conferred under Section 156(3), Cr.P.C., 1973 directed the concerned Incharge/ SHO of the police station to lodge/register the crime case/FIR and directed initiation of investigation and directed the concerned Incharge/ SHO of the police station to submit a report after due investigation.

Applying the law laid down by this Court in the cases referred to

hereinabove, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged offences attracting bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173, Cr.P.C., 1973.

10.1 At this stage, it is required to be noted that as per Section 21 of the MMDR Act the offences under the MMDR Act are cognizable.

10.2 As specifically observed by this Court in the case of Anil Kumar (supra), 'when a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., 1973 obviously, he has not taken cognizance of the offence and, therefore, it is a precognizance stage and cannot be equated with postcognizance stage'.

10.3 Even as observed by this Court in the case of R.R. Chari (supra), even the order passed by the Magistrate ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. As observed by the Constitution Bench of this Court in the case of A.R. Antulay(supra), filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. 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.

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

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

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

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the

MMDR Act and Rules made thereunder; and

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

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

11.10 Attention of this Court is also drawn to the judgment of the

Supreme Court in the matter of ***State of Punjab Vs. Raj Singh and another, reported as 1998(1) RCR (Crl.) Page 576.*** Relevant para No.2 of the same reads thus: -

> *2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police.*
>
> *From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any 9 proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 CrPC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in Gopalakrishna Menon v. D. Raja Reddy[1] on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of*

> *forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 Cr.P.C."*

11.11 Referring to the above, it is submitted that the legal position stands authoritatively explained, in the context of similar provisions and proceedings under different Statutes, wherein the underlying legal principle is identical. He submits that it has been consistently held that the statutory bar is imposed only on the Court to take cognizance of the offence and does not fetter the power of the police to register an FIR or to carry out investigation in accordance with law. The Magistrate, however, is precluded from acting upon such report for the purpose of taking cognizance in the absence of a complaint as mandated by the statute.

11.12 Thus, it is submitted that the procedure delineated by the Supreme Court permits the registration of an FIR and authorises the police to carry out investigation in accordance with law. Upon completion of the investigation, a report may also be prepared and placed before the competent Court, with a copy thereof being furnished to the officer duly authorised under the Mines and Minerals (Development and Regulation) Act, 1957. The authorised officer is thereafter required to institute a complaint in terms of the said Act, wherein such final report may be annexed as material in support of the allegations and be relied upon as evidence for the purpose of prosecuting the offender.

11.13 He submits that the single Judge(s) of this Court have failed to take note of the correct position of law in the matters of ***Kulwant Kaur*** (supra) and ***Jagjit Singh*** (supra), and have not examined the scope of Section 21 (6)

along with Section 22 of the Act of 1957.

12.1 I have heard the learned counsel for the parties as well as learned amicus and have gone through the documents appended with the present petition and the judgments referred to above.

12.2 It emerges from the facts of the case that police have, undisputedly, registered the FIRs, in relation to the cognizable offences not only under the Act of 1957 but also under the general penal laws and thereafter filed the final report on conclusion of investigation. In some cases, the FIR was registered on the complaints by the officials of the Mining Department (authorized officer). It is further undisputed that the procedure as delineated for institution of the 'complaint' was not adhered to and that, notwithstanding the same, the Court proceeded to take cognizance in some cases and framed charges against the accused.

13 Before proceeding further, it would be relevant to refer to certain statutory provisions under the procedural and substantive laws to appreciate the issue.

THE CODE OF CRIMINAL PROCEDURE, 1973

2. Definitions.—In this Code, unless the context otherwise requires,—

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(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an

offence, but does not include a police report. Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

"154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the

Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;
(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1)shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

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156. Police officer's power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the

local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

CHAPTER XV
COMPLAINTS TO MAGISTRATES

"200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

CHAPTER XXXV
IRREGULAR PROCEEDINGS

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465. Finding or sentence when reversible by reason of error, omission or irregularity.—(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

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THE MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957

21. ***Penalties***.—

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

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

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14.1 It is evident from the above that in a cognizable offence, there are certain powers conferred on the investigating agency and procedure for regulation of such powers is specified in 'Chapter XII' Cr.P.C., which also provides the safeguards for the accused. On the other hand, a complaint, as defined under Section 2 (d) Cr.P.C., is to be instituted as per 'Chapter XV' Cr.P.C.

14.2 It is only after a final report as per 'Chapter XII Cr.P.C.' (in a cognizable offence), or a complaint having been instituted as per 'Chapter XV' Cr.P.C. that the question of commencement of proceedings before a Court arises. The aspect of 'cognizance' is dealt with at the stage of 'Chapter XVII' Cr.P.C. The bar of cognizance prescribed under Section 22 of the Act of 1957, has been applied in the context of 'the Court', hence, such a bar would not be applicable at a stage prior to the stage of cognizance.

14.3 There can be no assumption that the Legislature was unaware of the expression used or of the separate procedure applicable to each proceedings, hence, both the clauses need to be harmoniously interpreted and applied.

14.4 In order to appreciate the controversy, it thus becomes necessary to examine the effect and interplay of Section 21 (6) with Section 22 of the Act of 1957. Undisputedly, Section 21 (6) of the Act of 1957 makes the offence cognizable, hence, as per law, an FIR can be registered and the investigation can be undertaken by the investigating agency. The proposition also stands fully settled by the Supreme Court in a catena of judgments

including the judgments in the matter of ***Sanjay Kumar*** (supra), ***Pardeep S. Wodeyar*** (supra) as well as in the matter of Jayant Vs. State of Madhya Pradesh. The position in law thus needs no reiteration about the competence and jurisdiction of the investigating agency/police official to register an FIR, conduct investigation and to prepare a final report. It is only upon the conclusion of investigation that section 22 of the Act of 1957 becomes applicable. A plain reading of the Section 22 reveals that although it opens with a "non-obstante clause", however, the limitation imposed thereby is consciously and deliberately confined to the power of "Court" to take cognizance of the offence and not to the authority of 'any person' or 'investigating agency.' Had the Legislature intended imposition of a universal and non-discriminatory prohibition encompassing investigation, registration of FIRs or submission of final report, the statutory bar under Section 22 of the Act of 1957 would not have been qualified to taking of cognizance by the Court alone and instead there would have been a sweeping bar. The legislative wisdom underlying the provision clearly reflects a conscious demarcation between the investigative domain of the police and the jurisdictional threshold at which the Court may take cognizance. The restriction is thus designed to regulate and limit the exercise of judicial power at the stage of cognizance, while simultaneously preserving the statutory authority of the investigating agency to act in respect of cognizable offences.

14.5 The Legislature has thus devised a two-step process for proceeding in offence(s) under Act of 1957. At the first stage, by expressly declaring the offences to be cognizable, the Legislature has empowered the police not merely to register an FIR but also to follow the procedure for

conducting investigation in the matter as prescribed for cognizable offences and thus carry out searches and seizures, effect arrests and detain persons, secure and preserve seized minerals or material and produce the accused and the case property before the competent forum, without being constrained by the procedural limitations applicable to non-cognizable offences. In this manner, the investigating agency has been equipped with an effective enforcement tool to promptly and efficaciously deal with violations of the statute. At the same time, the Legislature was also cognizant of the fact that offences under special Statutes often involve technical, regulatory, and domain-specific considerations requiring specialised knowledge in relation thereto. Hence, at the second stage of taking of cognizance of the offence by the Court, the legislature has applied a statutory filter by mandating that prosecution of the case must be only through the process of the department i.e. by way of a complaint by an authorized person. The underlying object seemingly being that the competent authority under the special Statute be fully apprised of all the material that may have been collected by the investigating agency and is afforded an opportunity to scrutinise, evaluate and ascertain such evidence in the light of the regulatory framework of the special statute. The 'authorized person' is thereafter within liberties to take recourse to all/any such measures as are prescribed therein. Hence, assuming that in a specific circumstances, the special statute confers upon the competent authority the power to compound such offences at the departmental level, such notices may be issued by the authorized person and /or he may institute a complaint. The aforesaid prohibition is also intended to operate as a safeguard for a person accused of having committed an offence under the special statute.

14.6 The purpose behind imposing such a prohibition is to safeguard the individuals from frivolous or vexatious prosecution at the hands of mischievous persons. The statutory embargo thus serves as an essential protective shield against abuse of the criminal process and unwarranted harassment of individuals. The Statute thus mandates that complaints for commission of the offences under the Act of 1957 should be routed only through the competent authorities designated under the special Statutes.

14.7 The position thus acts as checks and balances. Vesting of an absolute power solely and exclusively in the departmental domain may give rise to a cartelized unholy relationship between the wrong doer and the watchdog. Similarly, even the police was also not intended to be given unbridled sweeping powers in such matters which are more-often revenue centric. Hence, the Supreme Court took care of both the aspects in the matter of ***Jayant Kumar*** (supra) and struck a balance while keeping a check on both the agencies viz the police as well as the department.

14.8 The Division Bench categorically held that upon completion of investigation, the investigating agency is required to submit its final report along with the evidence collected to the authorized representatives/agents under the Special Act and may also forward the said report to the Illaqa Magistrate. I am of the opinion that the aforesaid procedural requirement needs to be mandatorily complied with and that the final report by the police should necessarily be forwarded also to the Illaqa Magistrate for record, lest any mischief is committed by the colluding Departmental officials. In the event of any such collusion or dereliction, an unquestionable record would be readily available with the Illaqa Magistrate for initiation of

departmental/penal proceedings against the erring officials. The said procedural safeguard can effectively redresses the possibility of any unholy nexus.

14.9 At the same time, a mere submission of the final report has not been applied as an expression of empowering the Illaqa Magistrate/the Special Judge to take cognizance of an offence qua which prohibition has been prescribed. The law does not pre-empt presumption of commission of an offence and such prima facie presumption may only be drawn after a complaint by an authorized person.

14.10 Further, the legal position as emerging from the judgment of the Supreme Court in the matter of **Devendra Kumar (supra)** (although in context of Section 195 of the Cr.P.C.), specifically holds that a statutory prohibition on taking of cognizance by a court cannot be invoked to interdict either the registration of the FIR or the conduct of investigation by the police and that the aforesaid exercise can be undertaken by the law enforcement agencies. The Supreme Court has hence recognised that such preliminary and investigative steps fall within the lawful domain of the investigating and law-enforcement agencies and are not eclipsed by the bar operating at the stage of cognizance.

15.1 The aforesaid principle had earlier been iterated and applied, in the specific context of the Act of 1957, by the Supreme Court, in the matter of **Pardeep S. Wodeyar (supra**) after making a specific reference to the judgment of **Sanjay Kumar (supra**), to hold that Section 22 of the Act of 1957 imposes a restriction only on the power of the Court to take cognizance and not on the authority of the police to register an FIR or to undertake

investigation. It is specifically held therein that Section 22 of the Act of 1957 is intended to restrict the jurisdiction of the Court and not to curtail the statutory powers of the police and that while the police are competent to investigate allegations of contravention of the Act of 1957 and to submit a final report upon completion of such investigation, a police officer cannot insist that the competent Court should take cognizance of offences under the Act solely on the basis of such final report. The above said position in law was later reiterated in the matter of **Jayant Vs. State of Madhya Pradesh** (supra).

15.2 The same now leads to an inextricably linked issue where offences under other penal Statutes may also have been committed along with offences under the Act of 1957. The issue which thus comes up for consideration of this Court is as to whether, in such circumstances, the Illaqa Magistrate or the competent Court would be justified in framing charges in respect of such other offences and whether it would be competent to take cognizance thereof or whether the statutory bar engrained under Section 22 of the Act of 1957 would still get attracted.

15.3 While deriving strength from the judgments of the Supreme Court referred to above, in such an eventuality, the Illaqa Magistrate/special Court is required to undertake an exercise with respect to the nature of the offences committed, the evidence collected and the essential ingredients specified for such offences. Where the nature of the allegations and the evidence so collected are such that they do not admit of segregation, and are incapable of being split up so as to give rise to an independent cause of action, distinct from the offence under the Act of 1957 and where such allegations

are found to be intrinsically intertwined with the said offence, the bar under Section 22 of the Act of 1957 would nonetheless operate.

15.4 In such cases, the predominant nature of the allegations must necessarily be examined. A recourse to the provisions of the general law would not be permitted solely to override the prohibition imposed by the special statute. The invocation of general penal provisions, in the face of an express statutory embargo, would thus defeat the legislative intent and safeguard under Section 22. However, in circumstances where the material on record discloses the commission of other offences, that are truly distinct, independent, and severable from the offence under the Act of 1957, the bar under Section 22 would not per se interdict the Court from proceeding in accordance with law.

15.5 To illustrate, where there is an over extraction of the mineral in excess of the permissible limit and for which the royalty has not been paid, such conduct may, in a given case, also amount to commission of offences under the general provisions of IPC/BNS, 2023, however, such acts remain intrinsically intertwined with and form an integral part of the offence pre-dominantly under the domain of the Act of 1957. In such a situation, the offence, though clothed with additional penal consequences under the general law, continues to be governed by the special statute and the statutory bar under Section 22 would remain operative. At the same time, there may also be a situation where the accused person, in the course of committing an offence under the Act of 1957, may have committed other acts such as theft of tippers or loading machinery or may have caused death or bodily injury to another person during the course of the illegal mining operation. Such acts, though

occurring in the course of the commission of an offence under the Act of 1957, are distinct, independent and severable offences in themselves. They are not integrally intertwined with the offences under the special statute but are merely connected as part of the same transaction in a factual sense. In such an eventuality, the bar under Section 22 of the Act of 1957 would not be extended so as to provide an immunity from the prosecution for such independent offenses except on a complaint filed by the authorized person. Such an exercise, however, is required to be undertaken by the competent Court and the Statute nowhere debars the Court from proceeding to frame charges in respect of other distinct and independent offences.

16.1 It is also noticed that in case bearing No(s).CRM-M-61811-2025, CRM-M-60536-2025 and CRM-M-66839-2025, the charges have been framed against the petitioners therein for offence under the Act of 1957 as well as for offences under the IPC and in case bearing No.CRM-M-66761-2025, the charges have been framed for the commission of offence under the Act of 1957. The issue that, therefore, arises for consideration is whether, in the facts and circumstances of the present cases, the said action of the Court in framing charges under the general penal statute is legally sustainable or whether the same is liable to be set aside.

16.2 The preposition of law as above also requires to be examined from the perspective of Section 465 Cr.P.C. The position in law needs no elaboration that an order/sentence or judgment would not be set aside on an irregularity unless the same has occasioned a failure of justice. The provision embodies the legislative intent that criminal proceedings should not be rendered vulnerable to technical lapses unless they strike at the fairness of the

process or cause real prejudice to the accused.

16.3 This Court is thus required to examine as to whether the order framing charge in the present cases is a mere procedural irregularity, curable under law or a foundational illegality and would thus occasion a failure of justice.

16.4 While under the ordinary circumstances, a person may not be in a position to impugn an order framing charge solely because it has been done by a superior Court as it may not reflect substantive injustice, however, where the issue fundamentally is as regards the maintainability of proceedings itself, an illegality in framing charge becomes substantial and goes to the root of the matter.

16.5 The prohibition under Section 22 of the Act of 1957 being absolute, the statutory protection cannot be eroded merely because the Special Court has proceeded to frame charges. Permitting such an act would amount to obliterating the legislative intent and rendering it otiose thereby erasing the legislation and validate an illegality. The defect in the present case is not one of a mere error in the exercise of jurisdiction, rather, it is a fundamental error of competence, maintainability and cognizance. Once the initiation of the proceeding itself has been held to be not maintainable and in violation of law, the consequential orders flowing therefrom would not be accorded judicial protection. To sustain such proceedings would be to countenance an action beyond the spirit of the law. The provision of Section 465 Cr.P.C. thus would not be construed so as to erode or override an express statutory prohibition.

16.6 It is also required to be kept in mind that procedural laws are hand-maiden of justice. The saving clause under Section 465 Cr.P.C. is

designed to prevent miscarriage of justice on account of inconsequential or immaterial procedural lapses where no real prejudice has occasioned. It cannot be elevated to an enabling provision to validate proceedings that are illegal or to eclipse a substantive statutory enactment. The said provision is to safeguard the judicial time and prevent reversal of proceedings on technicalities, where the trial is otherwise fair and lawful. It does not operate as a shield to protect proceedings that suffer from a illegality or are void ab initio. To apply the provision otherwise would be to subvert the legislative intent and undermine the rule of law itself.

16.7 It is further evident in some cases a challenge to the proceedings has been filed belatedly and further proceedings may have been undertaken in the interregnum. However, once this Court has held that the proceedings were beyond law, the protection afforded under the Statute would not be denied. The error being fundamental and the defect being incurable, the burden and responsibility falls upon the Court to ensure that the defect is remedied at the first available opportunity instead of investing further judicial time in a wasteful final outcome.

17.1 Having considered that the law does not impose an absolute bar on the splitting up of offences, where such offenses are distinct and independent and do not form an integral part of the same transaction, the impugned orders framing charge have been examined in light thereof. I find that no such exercise has been undertaken by the Court in the present set of cases. Apparently, the Court proceeded with the framing of the charges assuming the jurisdiction in the matter and taking cognizance of the case. Such an approach, on the face of it is in conflict with the settled position of law

governing the limits of jurisdiction and the procedure to be followed before cognizance can be lawfully taken.

In view of the above, it is held as under: -

(i) That the prayer of the petitioners in so far as the plea of seeking quashing of the FIR as well as the final report in light of Section 22 of the Act of 1957, is concerned, the said prayer is dismissed in the light of Section 21 (6) read with the judicial pronouncements in the matter of **Jayant Vs. State of Madhya Pradesh** (supra)

(ii) The orders dated 01.08.2025 passed in CRM-M-66839-2025 titled Jagdish Singh Vs. State of Punjab framing charge against the petitioner therein for offences under Sections (21)(1) of the Act of 1957 and Sections 379 and 411 of the IPC and the order dated 30.04.2025 passed in CRM-M-60536-2025 titled as Nasib Chand and another Vs. State of Punjab and another framing charge against the petitioners therein as well as the order framing charge dated 12.08.2025 passed in CRM-M-61811-2025, are, however, liable to be set aside for being in violation of law;

(iii) The authorized person, if so advised, may file a complaint before the competent Court whereupon further proceedings shall be undertaken by the competent Court, as per law;

(iv) The judgment in the matter of Kulwant Kaur (supra) relied upon by the counsel for the petitioners is per incuriam as it fails to take note of the provisions contained under Section 21 (6) of the Act

of 1957 and also the judicial pronouncements of the Supreme Court of India on the subject.

18 The CRM-M-66839-2025; CRM-M-60536-2025; CRM-M-61811-2025 and CRM-M-66761-2025 are thus partly allowed. CRM-M-35908-2025 is disposed of in above terms.

19 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

20 A photocopy of this order be placed on the files of connected cases.

January 09, 2026. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No