

Relevant Judgments on The Mines and Minerals (Development and Regulation) Act, 1957

<p>Whether the provisions contained in Sections 21, 22 and other Sections of the MMDR Act operate as bar against prosecution of a person who has been charged with allegation which constitutes offences under Sections 379/414 and other provisions of the Penal Code (IPC)?</p> <p>Whether the provisions of the MMDR Act explicitly or impliedly exclude the provisions of the Penal Code (IPC) when</p>	<ul style="list-style-type: none">• learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made there under and at this stage the bar under Section 22 of the MMDR Act shall not be attracted• 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 there under and orders issuance of process/summons for the offences under the MMDR Act and Rules made there under• 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 there under• in respect of violation of various provisions of the MMDR Act and the Rules made there under, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/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 there under and thereafter after investigation the concerned In-charge 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	<p>Jayant vs The State of Madhya Pradesh (2021) 2 SCC 670</p>
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<p>the act of an accused is an offence both under the Penal Code and under the provisions of the MMDR Act?</p> <p>When and at what stage the bar under Section 22 of the MMDR Act would be attracted?</p> <p>When and at what stage the Magistrate can be said to have taken cognizance attracting the bar under Section 22 of the MMDR Act?</p>	<p>made there under and at that stage it can be said that cognizance has been taken by the learned Magistrate</p> <ul style="list-style-type: none"> • in a case where the violator is permitted to compound the offences on payment of penalty as per subsection 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 there under so compounded • 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 	
<p>Provisions of MMDR Act and the offence defined under Section 378, IPC - the ingredients</p>	<ul style="list-style-type: none"> • Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed • 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 	<p>State of NCT of Delhi vs Sanjay (2014) 9 SCC 772</p>

<p>constituting the offence are different</p>	<p>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</p> <ul style="list-style-type: none"> • From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different • The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft • in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure • 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. 	
<p>Prosecution and cognizance</p>	<ul style="list-style-type: none"> • prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act is legal • prosecution and cognizance under Section 21 read with Section 4 of the Mines Regulation Act will not be valid and justified in the absence of the authorisation 	<p>Kanwar Pal Singh vs The State of Uttar Pradesh (2020) 14 SCC 331</p>
<p>Superdari of offending vehicle</p>	<ul style="list-style-type: none"> • Under Section 21 of the Act, any person transporting any mineral from land using a vehicle and contravening the provisions of Section 4 of the Act was liable to be punished with imprisonment for term which may extend to 5 years 	<p>Irfan vs State of Haryana and Another 2020 SCC OnLine P&H 1685 :</p>

	<ul style="list-style-type: none"> • Under sub-section 4A, the vehicle was liable to be confiscated by an order of a Court competent to take cognizance of the offence under sub-section (1) and it is to be disposed of in accordance with the directions of such Court • Section 22 of the Act further provides that a complaint had to be made in writing by the Central Government or the State Government • As per the provisions of Section 21(4) of the Act, the confiscation order is to be passed by the competent Court and in the absence of any such confiscation order, the respondents could not as such detain the vehicle during the proceedings which were pending • Resultantly, it is directed that the vehicle shall be released on the terms of the superdiginama as ordered by the JMIC 	<p>(2021) 1 RCR (Civil) 302</p>
<p>Directions issued for releasing vehicle on superdari</p>	<ul style="list-style-type: none"> • The respondents are directed that in future all such cases where a vehicle is seized in terms of MMDR Act or Rules framed there under and the penalty imposed is not paid within a reasonable time, either the requisite steps, as per rules, shall be taken for prosecuting the accused or an appropriate application shall be filed for confiscation of the vehicle in terms of Rule 101(10) • A period of 3 months can well be said to be a fairly reasonable time so as to enable the authorities concerned to take requisite steps in this direction • Once a vehicle is ordered to be confiscated, further steps for auctioning the same may be taken immediately instead of retaining the vehicle in the police station where its condition is bound to deteriorate which would be a loss to the State as well as it will not be able to recover much amount from auction of the vehicle on account of deteriorated condition of the vehicle • All those vehicles which are presently lying seized by respondent authorities for more than three months, pursuant to inspection carried out in terms of Rule 101 of Mining Rules 2012, and in respect of which the authorities have neither lodged any FIR nor instituted any complaint in the Court and have not even initiated confiscation proceedings shall be dealt with under provisions of Rule 	<p>K.C. Stone Crushing Co. and Others vs State of Haryana and Others 2021 SCC OnLine P&H 242 : (2021) 2 RCR (Cri) 469</p>

	<p>101(10) immediately</p> <ul style="list-style-type: none"> • The Director, Department of Mines and Geology, Haryana shall ensure that the needful in this regard is done within two weeks from today • Upon the respondent authorities either choosing to lodge a FIR/complaint or choosing to move an application under rule 101(10) of Mining Rules 2012 for confiscation of vehicle, it shall be open to the Court concerned to entertain an application for release of the vehicle on '<i>superdari</i>' during the pendency of such proceedings if there is likelihood of delay in conclusion of such proceedings • The Court dealing with such application shall decide the same independently while considering all such pleas as may be raised by the parties • The Court concerned shall, however, endeavour to dispose of such applications at the earliest • While considering release of vehicle on "<i>superdari</i>", the Court may choose to impose any such strict conditions as deemed fit • The Court concerned may even direct the applicant to deposit in Court an amount equal to the penalty imposed by the authorities concerned or part thereof, in addition to any other condition 	
<p>Release of vehicle on <i>Sapurdari</i></p>	<ul style="list-style-type: none"> • A Division Bench of this Court in <i>Gurbinder Singh @ Shinder v. State of Punjab</i>, (2016) 4 RCR (Cri) 492 answered the reference in favour of the owners of the vehicles, which were to be released during the pendency of the trial • The view that the vehicle could not be released under NDPS Act on Sapurdari was set aside, while keeping in mind the provisions of Sections 451, 452 and 457 of Cr.P.C. • It was also held that there was no such bar, once the provisions of Cr.P.C., are applicable • The Division Bench thus noticed that the independent decision on the 	<p>Maksood vs State of Haryana 2020 SCC OnLine P&H 3475</p>

	<p>confiscation has to be taken and nobody can benefit out of the idle parking of the vehicle unattended in the premises of the police station</p> <ul style="list-style-type: none"> • vehicle having seemingly been seized for the first time, the same is required to be released on payment of the price of the mineral; the applicable royalty for the mineral extracted and the fine as provided under the aforesaid provisions 	
<p>Seizure/ confiscation of the vehicle</p>	<ul style="list-style-type: none"> • The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 has been made in exercise of the powers conferred under Section 15(1) and Section 23(c) of The Mines and Minerals (Development and Regulation) Act, 1957 in which vide Rule 104 of the Rules, consequences of illegal or unauthorised mining has been provided • Under Rule 104(i) it is specifically provided that for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees shall be paid • The rationale and objective of Rule 104 is apparent. In case of violation by any person using his vehicle or tool etc; the release of the same can be made only after realisation on the payment of the price of the mineral and the applicable royalty for the mineral extracted apart from fine of Rs. 10,000/- • Such kind of provision seems to be a deterrent provision which has been made by the Rules in pursuance of powers derived from the Act. That is why statutory appeal has been provided under Rule 109 which would lie to the Director • Therefore, a defined procedure has been prescribed under the Rules in order to not only safe guard the interest of the State but also to safe guard the interest of the person from whom the vehicle and the minerals are confiscated 	<p>Amit vs State of Haryana 2019 SCC OnLine P&H 7325 : (2020) 2 RCR (Civil) 419</p>

	<p>by providing the remedy of appeal</p> <ul style="list-style-type: none">• perusal of Section 21(4) & (4-A) of the Act would show that Section 21(4) of the Act deals with seizure of the vehicle and Section 4-A of the Act deals with the confiscation of the vehicle. This is a case where vehicle has been seized and has not been confiscated at this stage by any order of the Court• Therefore, the remedy, if any for the petitioner would be before the Director as envisaged under Rule 109 of the Rules	
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