2025:AHC:223268

A.F.R.

Reserved on 10.11.2025

Delivered on 12.12.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 39225 of 2024

Mujeeb Ahmad

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Abdul Ahad, Omar Zamin
Counsel for Opposite Party(s)	:	G.A.

Court No. - 78

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Omar Zamin, learned counsel for the applicant and Sri O.N. Mishra, learned A.G.A. for the State.

2. Present application under Section 528 B.N.S.S. has been preferred for quashing the charge-sheet No.872 of 2020 dated 15.09.2020, cognizance/ summoning order dated 1.4.2024 as well as entire proceeding of Case No.904 of 2024, arising out of Case Crime No.805 of 2020, under Sections 379, 411 I.P.C., Rules 3, 57, 7 of U.P. Minor Minerals (Concession) Rules, 1963 and Sections 4, 21 of U.P. Mines and Minerals (Development and Regulation) Act, 1957, Police Station Naini, District Prayagraj, pending in the court of Additional Chief Judicial Magistrate-15, Prayagraj.

3. The brief facts of the case are that an FIR was lodged by the first informant, Yogesh Shukla, against the applicant and two others on 18.08.2020, registered as Case Crime No.805 of 2020, under Section 379 IPC, Sections 4/ 21 of U.P. Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'Act, 1957'), and Rules

3/7/57 of U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'Rules, 1963'). As per version of the FIR, the first informant, along with Brij Bali Singh, went to the place of incident found 155 cubic meters sand and 50 cubic meters *gitti* lying on Khata No.391, Arazi no.136, area 0.103 hectare. Further, the FIR narrates that the said property belongs to the Allahabad Development Authority, and the Lekhpal submitted a report stating that Arshad, Firoz, and Mojeeb Khan were using the place for selling the sand.

4. After registration of the FIR, the Investigating Officer investigated the matter and recorded the statement of first informant, Lekhpal, Brij Bali Singh, and other witnesses. During the course of investigation, Section 411 IPC was added, and thereafter the Investigating Officer submitted a charge sheet on 15.09.2020 under Sections 379 and 411 IPC, Sections 4/21 of the Act, 1957, and Rules 3/7/57 of the Rules, 1963. The learned Magistrate, in his wisdom, did not take cognizance of the offences, under Sections 4/ 21 of the Act, 1957 and Rules 3/7/57 of the Rules, 1963 in view of judgment passed by the Hon'ble Supreme Court and he took cognizance under Sections 379 and 411 IPC only vide his order dated 01.04.2024, which is under challenge by the applicant.

5. It is submitted by learned counsel for the applicant that an FIR was lodged against the applicant under Section 379 IPC, Sections 4/21 of the Act, 1957 and Rules 3/7/ 57 of Rules, 1963. After due investigation, the Investigating Officer submitted the charge-sheet in Sections 379 & 411 IPC, Sections 4/ 21 of Act, 1957 and Rules 3/7/57 of Rules, 1963. However, the learned Magistrate took cognizance only under Sections 379 & 411 IPC and did not take cognizance under Sections 4/ 21 of Act, 1957 or Rules 3/7/ 57 of Rules, 1963.

6. It is submitted that the learned Magistrate committed gross illegality in not accepting the charge-sheet in toto. It is also submitted that no offence under Sections 379 and 411 of the IPC is made out against the applicant, as it has not been identified whose property was allegedly stolen. Therefore, the essential ingredients constituting the offence of theft are not made out. It is further submitted that the applicant is an old person having no previous criminal antecedent. Therefore, it is prayed that the charge-sheet dated

15.09.2020, the cognizance order dated 01.04.2024, and the entire proceedings arising therefrom be quashed.

7. Per contra, learned A.G.A. vehemently opposed the prayer and submitted that there is no illegality in the cognizance order so far as it relates to taking cognizance under Section 379 and 411 IPC.

8. I have heard the rival submissions of both the sides and perused the record.

9. For reference Section 22 of the Act, 1957 and Rule 74 of Rules, 1963 as well as Rule 76 of U.P. Minor Minerals (Concession) Rules, 2021 (hereinafter referred to as 'Rules, 2021') are being quoted as below:-

> *"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.*
>
> *74. Cognizance of offences.*
>
> *(1) No court shall take cognizance of any offence punishable under these rules except on a complaint in writing of the fact constituting such offence by the District Officer or by any officer authorised by him in this behalf.*
>
> *(2) No court inferior to that of a magistrate of the first class, shall try any offence under these rules.*
>
> *76. Cognizance of offences.- (1) No Court shall take cognizance of any offence punishable under these rules except on a complaint in writing of the fact constituting such offence by the District Officer or by any officer authorised by him in this behalf.*
>
> *(2) No Court inferior to that of a Magistrate of the First Class, shall try any offence under these rules."*

10. The aforesaid Section 22 of the Act, 1957 is very clear which provides that no court shall take cognizance for any offence under the Act, 1957 and Rule 76 of Rules, 2021 also provides that no court shall take cognizance of any offence under the Rules, 2021 unless a complaint is filed in writing by

an officer authorised by Central Government or State Government. Similarly in view of Rule 74 of Rules, 1963, no cognizance can be taken under the Rules, 1963 unless a complaint is filed by the District Magistrate or any other officer authorised by him.

11. In the case of **Kanwar Pal Singh Vs. State of Uttar Pradesh and another reported in (2020) 14 SCC 331**, Hon'ble Apex Court observed that the Magistrate can take cognizance on the basis of charge sheet only for the offence under the Indian Penal Code, but the cognizance for the offence under the Act, 1957 can be taken only on the basis of complaint filed by authorised officer as per the provisions of Act, 1957. Paragraph 16 of this judgment is being quoted as under:-

> *"16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 C and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before ux should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs."*

12. The Apex Court again in the judgment of **Jayant and others Vs. State of Madhya Pradesh,** reported in **(2021) 2 SCC 670**, observed that even if the charge sheet is filed by the police after the investigation then for the offence under the Indian Penal Code, the learned Magistrate can take cognizance but for the offence under the Act, 1957, the learned Magistrate cannot take cognizance on the basis of that charge sheet and it is further observed that the Magistrate can take cognizance only when the complaint is filed by the authorised officer along with that charge sheet for the offence

under the Act, 1957. Paragraphs 21.3, 21.4 and 21.5 of the above judgment are being quoted as under:-

"21.3. 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 Rides made thereunder.

21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the 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 thereunder and thereafter after investigation the In-charge of the police station/investigating officer submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take dognizance 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.

21.5. In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A 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 Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

13. In view of the above legal position, it is clear that Magistrate cannot take cognizance of offence under Act, 1957 or under Rules, 2021 on the basis of the charge sheet and he may take cognizance only when complaint is filed

by the authorized officer along with the charge-sheet. Therefore, the learned Magistrate rightly and correctly did not take cognizance under Section 4/21 of the Act, 1957 and Rules 3/7/57 of Rules, 1963. So far as argument of the learned counsel for the applicant relating to taking cognizance under Sections 379 and 411 IPC is concerned, it is clear that charge-sheet was submitted after collecting the evidence. During course of investigation, the investigating officer recorded statement of informant Yogesh Shukla and Brij Bali Singh Lekhpal, who supported the prosecution case.

14. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal**, Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:-

> *"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety to do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 156(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

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

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

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. In the case of **R. Kalyani v. Janak C. Mehta and Others reported in 2009 (1) SCC 516**, the Hon'ble Apex Court has held as under:-

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

> *(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."*

16. The said decision has also been followed by the Apex Court in the case of **Kamlesh Kumari and Ors. v. State of U.P. and Ors. reported in 2015 AIR SCW 3700**.

17. Keeping in view the above stated settled position of law in the instant case, perusal of record shows that there are allegations against the applicant that applicant was indulging in illicit mining and theft of sand. In view of the allegations made in the FIR and material collected during investigation, it cannot be said that no cognizable offence is made out against the applicant. In the case of **State of NCT of Delhi vs. Sanjay 2014 AIR SCW 5487**, it was held that in a case where there is 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 of the Code of Criminal Procedure before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(b) of the Code of Criminal Procedure. Further in the case of **Rishipal vs. State of U.P., Crl. Misc. W.P. No. 12052 of 2010**, a Division Bench of this Court has held as under:-

> *"In the facts and circumstances stated above, since the applicant has been charged with offence under Section 379 IPC besides the offences under Section 3/21 of the Mines and Minerals (Regulation and Development) Act, 1957, under Rules 3/57/70 of the U.P. Mines Mineral (Concession) Rules, 1953 and Section 2/3 of the U.P. Gangsters Act, which are cognizable offences, we have no reason to take a view different from the view taken by the Apex Court in State of Orissa (supra) and other decisions."*

18. The above stated case laws are applicable in the present case and in view of that legal position, impugned charge-sheet and proceedings arising from it, are not liable to be quashed on the grounds raised by the learned counsel for the applicant. It is apparent from the FIR and material on record that a prima facie cognizable offence is made out against the applicant. The case of the applicant does not fall in any of the category enumerated by the Apex Court through various judicial pronouncement for quashing of FIR/charge-

sheet. It is well settled that at this stage, this Court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ingredients constituting the offence is required in order to see whether the proceedings deserves quashing.

19. As noted in the case of **State of Haryana vs. Bhajan Lal (supra)**, power of quashing of FIR or proceedings should be exercised sparingly and with circumspection and that too in the rarest of rare cases. In case of **Rupan Deol Bajaj v. K.P.S. Gill;** reported in **(1995) SCC (Cri) 1059, Rajesh Bajaj v. State of NCT of Delhi;** reported in **(1999) 3 SCC 259** and **M/S. Medchl Chemicals & Pharma (P) Ltd. v. M/S. Biological E Ltd. & Ors;** reported in **2000 SCC (Cri) 615**, the Apex Court clearly held that if a prima facie case is made out disclosing the ingredients of the offence, Court should not quash the complaint/ FIR/charge-sheet. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The note of caution was reiterated that while considering such petitions the Courts should be very circumspect, conscious and careful. Thus, there is no controversy about the legal proposition that in case, a prima facie case is made out, the proceedings cannot be quashed. Here it would also be pertinent to mention that questions of fact cannot be examined by this Court in proceedings under Section 482 Cr.P.C.

20. In State of **Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540**, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCCp. 550, para 11)

> *"11......It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."*

21. From the above stated case law it is apparent that adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 Cr.P.C. In view of the material on record it can not be held that the impugned criminal proceeding are manifestly attended with mala fide and maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

22. The investigating Officer conducted the investigation in this case, and after due investigation, submitted the charge-sheet. Since there are specific allegations against the applicant in the FIR as well as in the statements of witnesses, a prima facie offence is made out against the applicant. At this stage, this Court cannot see whether a conviction would be sustainable on the basis of evidence adduced by the prosecution during the course of trial. It would be erroneous to assess the material, collected by the Investigating Officer during the course of investigation. The quality of evidence cannot be appreciated by this Court in this jurisdiction. It is the duty of the trial court who will evaluate the evidence and pronounce the judgement on the basis of material before him.

23. The submissions raised by learned counsel for the applicant call for determination on questions of fact which may be adequately adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial court. In view of the aforesaid, no case for quashing the impugned proceedings or impugned order is made out. The petition lacks merit and thus, liable to be dismissed.

24. The instant application is hereby **dismissed**.

(Vivek Kumar Singh,J.)

December 12, 2025
Radhika