2012 (1) MWN (Cr.) 238 (DB)

IN THE HIGH COURT OF MADRAS
(Madurai Bench)

M. Jaichandren & S. Nagamuthu, JJ.

Crl.O.P. (MD) Nos.13173, 12992 & 14409 of 2011 & M.P. Nos.1 of 2011 in Crl.O.P. Nos.12992 & 14409 of 2011

5.1.2012

Sengol & Others ***.....Petitioners***

Vs.

State, rep. by the Inspector of Police, R.S. Mangalam Police Station & Others ***.....Respondents***

IPC, S.379 — Mines & Minerals Act, 1957, Section 21

- Theft of sand from Government land — Maintainability of prosecution for offence under IPC, Section 379 alone and both under Section 379, IPC & Section 21 of Mines Act.
- Whether simultaneous prosecution barred by principles of Double Jeopardy.
- Whether offences under Section 379, IPC and under Section 21 of Mines Act are same offences — Ingredients of.
- Whether Police can investigate and file final report in respect of both offences.
- Whether Magistrate can take cognizance upon final report in respect of both offences.
- Whether Inspector of Police authorized under Section 22, Mines Act to file Complaint in respect of offence under Section 21.

CONSTITUTION OF INDIA, Article 20(2) — GENERAL CLAUSES ACT, 1897 (10 of 1897), Section 26 — Applicability of bar under — Act of Accused constituting offences under two different enactments — Prosecution can be launched under both enactments — Whether Accused can be punished under both penal provisions — As per Article 20(2) punishment can be imposed only under one penal statute and not under both — As per Section 26 of G.C. Act, Accused not liable to be punished twice for same offence — Act of Accused constituting two offences under two different enactments not same — Therefore, no bar to punish Accused under both enactments — Punishment under both enactments not bad when offences are distinct and separate with different ingredients — Simultaneous prosecution under both enactments not barred by principles of Double Jeopardy — Supreme Court in *The Institute of Chartered Accountants* followed. (Paras 25, 26 & 36)

a. As per the said provision, there can be no doubt that if the act of an Accused constitutes offences falling under two different enactments there can be no difficulty in holding that prosecution can be launched under both the penal provisions, but as per Article 20(2) of the Constitution of India, punishment can be imposed only under one penal statute and not under both. Under Article 20(2) of the Constitution, where a person has been convicted for an offence by a Court of competent jurisdiction, the conviction is a bar to all further Criminal

proceedings for the same offence. Here, the expression "for the same offence" requires to be emphasised. It makes very clear that if the act of an Accused constitutes two offences [under different enactments], which are not the same, then there can be no bar to punish him under both the enactments. In order that the prohibition is attracted, the same act must constitute an offence under more than one enactment. If there are two distinct and separate offences with different ingredients, under two different enactments, punishment under both the enactments will not be bad. *[Para 26]*

b. In such view of the matter, in our considered opinion, as held by the Hon'ble Supreme Court in *The Institute of Chartered Accountants v. Vimal Kumar Surana's case,* there can well be a prosecution for an offence under Section 379 of IPC as well as under Section 21 of the Mines and Minerals Act simultaneously and the Principle of Double Jeopardy shall not be a bar for such simultaneous prosecution. *[Para 36]*

INDIAN PENAL CODE, 1860 (45 of 1860), Sections 378 & 379 — MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (67 of 1957), Section 21 — Ingredients of offences under — Dishonestly taking any movable property out of possession of a person without his consent constitutes offence of theft as defined under Section 378, IPC — Whereas contravention of terms & conditions of mining lease, etc. in terms of Section 4 constitutes offence punishable under Section 21 of Mines & Minerals Act — Ingredients of offence under Section 379, IPC totally different from ingredients of offence under Section 21 of Mines & Minerals Act. (Paras 34 & 35)

a. Now, the question is whether the ingredients of Section 378 of IPC are similar to that of the ingredients of Section 21 of the Mines and Minerals Act. As we have already noted, Section 21(1) of the Mines and Minerals Act states that whoever contravenes the provisions of sub-sections (1) or (1-A) of Section 4 shall be punished with imprisonment or with fine or with both. Now, let us have look into sub-sections (1) & (1-A) of Section 4 of the Act. Sub-section (1) of Section 4 states that no person shall undertake any reconnaissance, prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licences or, as the case may be, of a mining lease granted under this Act and the rules made there under. Sub-section (1-A) of Section 4 states that "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. *[Para 34]*

b. A cursory comparison of these two provisions with Section 378 of IPC would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. constitutes an offence punishable under Section 21 of the Mines and Minerals Act, whereas dishonestly taking any movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in Section 378 of IPC are totally different from the ingredients of an offence punishable under Section 21(1) r/w Sections 4(1) & 4 (1-A) of the Mines and Minerals Act. *[Para 35]*

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (67 of 1957), Sections 21(1), 21(6) & 22 — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Sections 154 & 190 — Offence under Section 21(1) — Cognizable offence as per Section 21(6) — Therefore, it is lawful for Police to register a case under Section 154, Cr.P.C. — However, Section 22 prohibits cognizance being taken except upon a Complaint in writing made by person authorized either by Central Government or State Government — Therefore, Police Officer on completing investigation cannot lay a final report under Section 173, Cr.P.C. — And, Court cannot take cognizance upon such final report in view of bar contained in Section 22 — Court can take cognizance only upon Private Complaint filed in writing by person authorized by Central Government or State Government and not on Police Report. (Paras 38 & 40)

a. As provided in Section 21(6) of the Mines and Minerals Act, an offence under sub-section (1) of Section 21 is cognizable and therefore, it is lawful for a Police Officer to register a case as provided in Section 154 of the Code of Criminal Procedure and to investigate the same as per the provisions of the Code of Criminal Procedure. But, the difficulty arises only in the matter of taking cognizance. Section 22 of the Mines and Minerals Act prohibits cognizance being taken except upon a Complaint in writing made by a person authorised either by the Central Government or the State Government. If the act of the Accused constitutes exclusively an offence under the Mines and Minerals Act, it goes without saying that the Police Officer on completing the investigation, cannot lay a Final Report because, on such report, the Court cannot take cognizance in view of the bar contained in Section 22 of the Act. *[Para 38]*

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (67 of 1957), Sections 22 & 21(4) — G.O.Ms. No.114, Industries Department, 18.9.2006 — Person competent to file Complaint under — Must be person authorized by Central Government or State Government — G.O. issued by State Government authorizing Police Officer not below rank of Inspector of Police to exercise power under Section 21(4) — Inspector of Police, therefore, held to be person competent to file Complaint before Magistrate — And, Court can take cognizance on such Complaint. (Paras 40 to 43)

a. But, in the cases before us, the conflict is between the Mines and Minerals Act and the Code of Criminal Procedure. When there is such a conflict between a special law and a general law, indisputably, the special enactment will prevail over the general law. That is the reason why we are inclined to hold that Section 22 of the Mines and Minerals Act will override Section 190 of Cr.P.C. and, therefore, in respect of offence under the Mines and Minerals Act, cognizance can be taken only on a Private Complaint as provided in Section 22 of the Mines and Minerals Act, and not on a Police Report. Thus, the ratio laid down by the Supreme Court in *Sharat Chandra Sahu's case* will not be of any help to the prosecution in the instant cases. *[Para 40]*

b. At this juncture, we may refer to the Order in G.O.Ms. No.114, Industries (MMC.I) Department dated 18.9.2006, wherein, in exercise of the power conferred on the Government under sub-section (4) of Section 21 of the Mines and Minerals Act, the Tamil Nadu Government has issued the following Notification:

> "Under sub-section (4) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) the Governor of Tamil Nadu hereby empowers the Police Personnel not below the rank of Inspector of Police to exercise power under the said sub-section (4) of Section 21, within their respective jurisdiction." *[Para 41]*

c. It is contended by the learned Additional Advocate General that since the Inspector of Police has been authorised by the State Government as per the Government Order cited, an Inspector of Police can investigate into the offence under Section 21 of the Mines and Minerals Act so as to lay a final report. But, we are not persuaded by the said contention for the following reasons. *[Para 42]*

d. In this regard, we may again recapitulate the facts involved in *Jeewan Kumar Raut case* referred to above. In that case, though initially the case was registered by the State Police, it was transferred to the Inspector of Police, CBI who was authorised to file a Complaint under TOHO Act. The Hon'ble Supreme Court held that though the Respondent *viz.,* Inspector of Police, CBI happens to be a Police Officer, he cannot file a final report and instead on completing the investigation, he can only file a Private Complaint as an authorised person, upon which cognizance can be taken. Similarly, in our considered opinion, in view of the authorisation given under Section 22 of the Mines and Minerals Act to the Inspector of Police, on completing the investigation, he can file only a Complaint before the Magistrate in the capacity of an authorised person under Section 22 of the Mines and Minerals Act. On such Complaint, the Court may take cognizance. *[Para 43]*

INDIAN PENAL CODE, 1860 (45 of 1860), Section 379 — MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (67 of 1957), Section 21 — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Sections 154 & 190 — Theft of sand from Government land — Constitutes offence both under Section 21 of Mines & Minerals Act and Section 379, IPC — Ingredients of offence under both enactments being different, both not same offences in terms of Article 20(2) of Constitution — Case filed under Section 379, IPC alone — Maintainability of prosecution under Section 379, IPC — Provisions of Mines & Minerals Act does not exclude provision of IPC — Offence under Section 379 being cognizable, it is lawful for Police to register case under Section 154, Cr.P.C. for offence under Section 379, investigate same and to file final report under Section 173, Cr.P.C. — And, Court well within its jurisdiction to take cognizance upon final report as provided under Section 190(1)(b), Cr.P.C. — To this extent there is no conflict between Mines Act and Code and thus, question of one overriding other does not arise — Therefore, FIR where case registered only under Section 379, IPC, not liable to be quashed. (Paras 37 & 46(i))

a. Now, let us turn to the conditions requisite for initiation of proceedings as dealt with in Chapter XIV of the Code of Criminal Procedure. An offence under Section 379 of IPC is admittedly cognizable and, therefore, in respect of theft of sand from Government land, it will be lawful for the Police to register a case, investigate the same and to lay a final report under Section 173 of the Code, upon which the jurisdictional Magistrate will be well within his jurisdiction to take cognizance as provided in Section 190(1)(b) of the Code of Criminal Procedure. To this extent, we make it clear that there is no conflict between the Mines and Minerals Act and the Code of Criminal Procedure and thus, question of one overriding the other does not arise. Therefore, in such cases, where the cases have been registered only under the provisions of IPC, more particularly, under Section 379 of IPC in respect of theft of sand, the question of quashing the FIRs or any subsequent proceedings does not arise at all. *[Para 37]*

b. Since, the offences under the Indian Penal Code involved in the cases before us and an offence under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals (Development and Regulation) Act will not exclude the provisions of IPC. Therefore, in respect of sand theft, it will be lawful for the police to register a case as provided in Section 154, Cr.P.C., under Section 379 and other relevant provisions of IPC, investigate the same as per the provisions of the Code of Criminal Procedure and to lay a final report under Section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore, such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed. *[Para 46(i)]*

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (67 of 1957), Sections 21 & 22 — INDIAN PENAL CODE, 1860 (45 of 1860), Section 379 — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Sections 154 & 190 — Theft of sand from Government land — Act of Accused constituting offence under IPC as well as Mines Act — Registration of case both under IPC and Mines Act not illegal — Police may proceed with investigation in both but final report can be filed only in respect of offence under IPC — In respect of offence under Mines Act Police Office may file a separate Complaint provided he is authorized under Section 22 — In view of G.O. 114/18.9.2006, Inspector of Police authorized to file Complaint in respect of offence under Section 21 and upon which jurisdictional Magistrate may take cognizance — If, Police files final report in respect of both offences, Magistrate can take cognizance of offence under IPC alone. [Paras 38, 46(ii) to 46(v)]

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

(Development and Regulation) Act, he may file a separate Complaint, provided he has been authorised under Section 22 of the said Act. *[Para 46(ii)]*

b. In any event, if the Police Officer, files a final report in respect of offences under IPC as well as under Section 21 of the Mines and Minerals (Development and Regulation) Act, the Magistrate may take cognizance of the offences under IPC alone and proceed with the trial. *[Para 46(iii)]*

c. In respect of offences under the Mines and Minerals (Development and Regulation) Act, the Court shall take cognizance only on a Complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a Police Report. *[Para 46(iv)]*

d. In the State of Tamil Nadu, so long as the Notification issued under G.O.Ms. No.114, Industries (MMC.I) Department, dated 18.9.2006 authorising the Inspectors of Police to file Complaints under Section 22 of the Mines and Minerals Act, is in force, on completing the investigation in respect of the offence under Section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a Complaint under Section 22 of the Mines and Minerals Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance. *[Para 46(v)]*

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (67 of 1957), Sections 22 — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 190 — Conflict between Special law and General law — Special enactment will prevail over General law — Section 22 of Act will override Section 190 of Code. (Para 40)

a. But, in the cases before us, the conflict is between the Mines and Minerals Act and the Code of Criminal Procedure. When there is such a conflict between a special law and a general law, indisputably, the special enactment will prevail over the general law. That is the reason why we are inclined to hold that Section 22 of the Mines and Minerals Act will override Section 190 of Cr.P.C. and, therefore, in respect of offence under the Mines and Minerals Act, cognizance can be taken only on a Private Complaint as provided in Section 22 of the Mines and Minerals Act, and not on a Police Report. Thus, the ratio laid down by the Supreme Court in *Sharat Chandra Sahu's case* will not be of any help to the prosecution in the instant cases. *[Para 40]*

CASES REFERRED

V.K. Saravanan & R. Shanmugasundaram, Senior Counsel for S. Ravi & K. Anandan, Advocates for Petitioner.

K. Chellapandian, Additional Advocate General assisted by A. Ramar, Additional Public Prosecutor for Respondent.

Finding — Reference answered — Cr.O.Ps. directed to be listed before Single Judge for disposal.

Prayer : Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the case registered in Crime No.101of 2011 on the file of the Respondent-Police and quash the FIR.

JUDGMENT

S. Nagamuthu, J.

1. The Petitioners, in Crl.O.P. No.13173 of 2011, are Accused in the case in Crime No.101 of 2011, on the file of the Inspector of Police, R.S. Mangalam Police Station, Ramanathapuram District, for alleged offence said to have been committed by them punishable under Section 379 of IPC. Seeking to quash the said FIR, the Petitioners have come up with the said Original Petition.

2. The Petitioner, in Crl.O.P. No.12992 of 2011, is the 1st Accused in the case in Crime No.226 of 2011 on the file of the Inspector of Police, Mayanur Police Station, Karur District, for alleged offences said to have been committed by him punishable under Sections 143, 353 & 506(i) of IPC r/w S.3(1) of T.N.P.P.D.L. Act, 1992 and Ss.4(1), 4(1-A), 21(1) of the Mines and Minerals (Development and Regulation) Act and Rules 36-A of the Minor Minerals Concession Rules, 1959. Seeking to quash the said FIR, he has come up with the said Original Petition.

3. The Petitioner, in Crl.O.P. No.14409 of 2011, is the Accused in Crime No.40 of 2011 on the file of the District Crime Branch, Dindigul for alleged offences said to have been committed by him punishable under Sections 447 & 379 of IPC and Sections 21(1) & 21(4) of the Mines and Minerals (Development and Regulation) Act. Seeking to quash the said FIR, he has come up with the said Original Petition.

4. In all these Petitions the common ground raised is that under Section 22 of the Mines and Minerals (Regulation and Development) Act, 1957 [hereinafter referred to as "The Mines and Minerals Act"], since cognizance can be taken by a Competent Court only on a Private Complaint to be preferred by a person authorised by the Central/State Government, the provisions of the Code of Criminal Procedure stand excluded and, therefore, FIR cannot be registered by the Police and Police Report cannot be filed in respect of offences under the said Act.

5. To substantiate the said ground, reliance has been made by these Petitioners on a judgment of a learned Single Judge of this Court in ***D. Sudharshan v. State,*** 2006 (2) MLJ (Crl) 115, and followed in ***Muthu and another v. State,*** Crl.O.P.(MD) No.12307 of 2011 dated 16.9.2011. In those two

cases, two different learned Single Judges of this Court have quashed the FIRs on the ground that Section 22 of the Mines and Minerals Act will over-ride the provisions of the General Law, *viz.*, the Code of Criminal Procedure and so, the FIR registered under Section 379 of IPC, on the allegation that theft of sand belonging to the Government was committed by the Accused, is illegal.

6. When the Crl.O.P.(MD) No.13173 of 2011 came up for consideration before one of us [Justice S. Nagamuthu], the learned Government Advocate [Criminal Side] raised a doubt about the correctness of the ratio laid down in the above two judgments by the learned Single Judges. The learned Government Advocate relied on Section 26 of the General Clauses Act and some judgments of the Hon'ble Supreme Court in this regard. Having considered the said rival submissions and having considered the substantial questions of law, having larger public importance involved, the matter was placed before the Hon'ble Administrative Judge of Madurai Bench to refer the said questions to a Larger Bench to decide the following substantial questions of law:

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

7. As per the direction of the Hon'ble Administrative Judge, the above two questions have been placed before this Division Bench by way of a reference to answer.

8. We have heard learned Counsel appearing for the Petitioners and the learned Additional Advocate General for the State and we have also perused the records carefully.

9. In all these cases, the crux of the allegations made against the Petitioners in the FIRs is that they committed theft of sand from rivers and river beds belonging to the Government. The said act also constitutes violation of the provisions of the Mines and Minerals Act. The above said act committed by the Petitioners, according to the prosecution, not only constitutes an offence punishable under Section 21 of the Mines and Minerals Act, but also constitutes offences punishable under the Indian Penal Code, more particularly, Section 379 of IPC. That is how, in these cases, apart from invoking the provisions of the Mines and Minerals Act, in the FIRs, Section 379 and other provisions of IPC have also been invoked.

10. Before proceeding further into the rival contentions, let us have a look into the relevant provisions of the Mines and Minerals Act. Section 4 of The Mines and Minerals Act reads follows:

"*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 there under]:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the 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 Explanation 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 Section 617 of the Companies Act, 1956:]

[Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.]

[*(1-A)* No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rRules 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 there under.

[*(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]

11. Section 21 of the Mines and Minerals Act reads thus:

"*21. Penalties.— [(1)* Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.]

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

[*(3)* Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

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

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

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

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

12. Section 22 of the Mines and Minerals Act reads thus:

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

13. The contention of the Petitioners is that, as per Section 22 of the Mines and Minerals Act, cognizance can be taken only on a Complaint, that too, made in writing by a person authorised in this behalf by the Central Government or the State Government. Registering a case for any offence under the Mines and Minerals Act by the Police will be a wasteful exercise, because, on completing the investigation, the Police Officer cannot lay a Police Report as the Court can take cognizance only on a Complaint and not on a Police Report.

14. But, it is the contention of the learned Additional Advocate General that under Section 21(6) of The Mines and Minerals Act, an offence under sub-section (1) of Section 21 is cognizable notwithstanding anything contained in the Code of Criminal Procedure. Therefore, it is lawful for the police to register a case and to investigate. It is his further contention that if the act of an Accused constitutes offences under two different enactments, as per Section 26 of the General Clauses of Act, there can be prosecution under both the enactments, however, there shall be punishment only under one enactment. The learned Additional Advocate General would further submit that in the case of illegal sand mining from the Government land, the said act

of the Accused, not only falls within the ambit of Section 21(1) of the Mines and Minerals Act, but also, falls under Section 379 of IPC. Therefore, according to him, there is nothing illegal on the part of the police in registering the case under the provisions of the Mines and Minerals Act as well as under the provisions of the IPC. He would further submit that the provisions of the Code of Criminal Procedure have not been completely made inapplicable by the provisions of the Mines and Minerals Act. Therefore, according to him, the FIRs in the instant cases are not liable for quashing.

15. Now, let us turn to the judgment of a learned Single judge of this Court in ***D. Sudharshan's case.*** In that case, for illegal sand mining from Government land, case was registered by the police for offence punishable under Section 4(1-A) r/w 21 of the Mines and Minerals Act, 1957 and Section 379 of IPC. Placing reliance on Section 22 of the Act, it was contended before the learned Judge that the FIR was liable to be quashed. To substantiate the said contention, a judgment of a Single Judge of Karnataka High Court in ***K. Srinivas and others v. The State of Karnataka,*** 1995 Crl.L.J. 3810, [mistakenly mentioned in ***Sudharshan's case*** as ***State of Karnataka v. Nagesh alias Ramesh,*** 1995 Crl.L.J. 3816], was relied on, wherein the Karnataka High Court in paragraph 39 has held as follows:

> "*39.* A close and careful reading of Section 22 extracted hereinabove, would show that there is a blanket prohibition on the Court from taking cognisance of any Offence punishable under the provisions of the Act of 1957 or the Rules made there under except upon a Complaint in writing made by a person authorised in that behalf by the Central Government or the State Government. If the investigation undertaken by the Jalahalli Police Station on the strength of the information lodged by the Assistant Superintendent of Police not competent to exercise the powers, which formed the basis for his information, were to culminate in the formation of opinion by the Sub-Inspector of Police that Petitioners 1 to 3 would be required to be forwarded for inquiry and trial for the offence punishable under Section 4 of the Act of 1957 and Sections 447 & 379 read with Section 511 of the Indian Penal Code, in so far as the quarrying operations in the land bearing Survey No.11 and if the final report is to be submitted in accordance with the opinion, it is evident from Section 22 that the learned Magistrate cannot take cognizance. The charge-sheet would be merely a scrap of paper. If the learned Magistrate could not take the cognisance of the offences, he cannot try the offence in accordance with law. In that view of the matter also, the registration of the case on the basis of the information furnished by the Assistant Superintendent of Police and the investigation taken up on the basis of the registration of the case and issuance of FIR would be a futile and fruitless exercise."

16. Following the said ratio laid down by the Karnataka High Court, the learned Judge, in ***D. Sudharshan's case,*** in paragraph 5, concluded as follows:

> "*5.* I have perused the materials available on record and heard the submissions made by both sides. Admittedly, the Village Administrative Officer is not an authorised person by the State Government to proceed against the Accused for the offence alleged in the FIR. Under such circumstances, the decision cited by the

learned Counsel for the Petitioner is squarely applicable to the present case. Merely because, the general provisions of Indian Penal Code is included, it cannot be contended that the Respondent-Police has got the jurisdiction to investigate the offence. It has been repeatedly held by the Supreme Court that special enactment will over-ride the general provisions of law and specific provisions will over-ride the other provisions. Under such circumstances, I find that this case is a fit case to quash the proceedings. Accordingly, the proceedings in Cr. No.590/2005 pending on the Respondent-Police is quashed and this Petition is ordered."

17. Later on, in ***Muthu's case*** [referred to above] the case was registered by the Police under Section 379 of IPC for theft of sand from Government land. The FIR was sought to be quashed placing reliance on Section 22 of the Mines and Minerals Act and the ratio laid down in ***D. Sudharshan's case.*** Yet another judgment in ***Balasubramanian and 3 others v. The State*** 2009 (2) LW (Crl.) 878, has also been relied on wherein it has been held that when the prosecution was launched by a person , who is not authorised, the Complaint is liable to be quashed. Similar view has been taken in ***K. Subramani v. State,*** 2007 (1) MLJ (Crl) 392. Following the above judgments, the learned Single Judge was pleased to quash the FIR. Now, the correctness of the ratio laid down in these cases needs to be examined in detail as per the reference made.

18. The learned Senior Counsel, appearing for one of the Petitioners, placed reliance on a Division Bench Judgment of Kerala High Court in ***Moosakoya v. State of Kerala,*** 2008 Cri.L.J. 2388. That was a case where prosecution was launched for alleged offences under Sections 23, 24 & 25 of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. Section 24 of the said Act reads as follows:

"*24. Offence under this Act to be cognizable.*— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences under this Act shall be cognizable."

19. Section 25 of the said Act reads thus:

"*25. Cognizance of offence.*— No Court shall take cognizance of any offence punishable under this Act, except upon a Complaint in writing made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology."

20. The learned Senior Counsel would point out that these two provisions namely Sections 24 & 25 of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 are in *pari materia* to Sections 21(6) & 22 of the Mines and Minerals Act. In the said judgment, after referring to various decisions of the Hon'ble Supreme Court on this aspect, the Division Bench of Kerala High Court, in paragraph 3 of the judgment, has held as follows:

"*3.* A plain reading of the above provision will show that even though by Section 24 all offences under the Act are made cognizable, no Court can take cognizance of the offence except upon a written Complaint made by a person authorised in

this behalf by the Government of the District Collector or a Geologist of the Department of Mining and Geology. A 'Complaint in writing' by the authorised officer etc. is the only condition for taking cognizance as provided in Section 25. If a Police Officer is authorised by the Government, he may also file a Compliant on the basis of which the Court may take cognizance. But, the Court cannot take cognizance of any offence punishable under the Sand Act on a Police Report filed under Section 173(2) of the Cr.P.C. after investigation by Police."

21. The learned Senior Counsel, taking us through these judgments, would submit that since the provisions of Sections 21(6) & 22 of the Mines and Minerals Act are in *pari materia* to Sections 24 & 25 of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, as held by the Kerala High Court, for launching a prosecution under the Mines and Minerals Act also, it is absolutely necessary that there has to be a Complaint made by an authorized person. And, the Court cannot take cognizance of any offence punishable under the Act on a Police Report falling under Section 173(2) of the Code.

22. The learned Senior Counsel would, nextly, rely on a judgment of the Hon'ble Supreme Court in ***Jeewan Kumar Raut v. CBI,*** 2009 (7) SCC 526. That was a case where the Hon'ble Supreme Court had to deal with the provisions of Transplantation of Human Organs Act, 1994 [hereinafter referred to as "the TOHO Act"] Section 22 of the said Act reads as follows:

"*Section 22. Cognizance of offences.— (1)* No Court shall take cognizance of an offence under this Act except on a Complaint made by

(a) the appropriate authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the appropriate authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the appropriate authority concerned, of the alleged offence and of his intention to make a Complaint to the Court.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(3) Where a Complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."

23. The FIR in that case was registered for alleged offences, not only under the TOHO Act, but also under various provisions of IPC. The Police Officer, realising the fact that he could not investigate and file a final report, handed over the case to the Authorised Officer under the Act *viz.*, an Inspector of Police, CBI, for the purpose of investigation. The investigation was accordingly conducted by the authorised officer, who later on, filed the final report. The question was whether the said report could be a Police Report under Section 173(2) of the Code and whether the Court could take

cognizance on the same. Referring to Section 22 of the said Act, the Hon'ble Supreme Court, in paragraphs 26 to 28, has held as follows:

> "*(26)* 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 authorisation under Section 13(3)(iv) of TOHO (Transplantation of Human Organs Act, 1994). 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.
>
> *(27)* 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.
>
> *(28)* To put it differently, upon completion of the investigation, an authorised officer could only file a Complaint and not a police report, as a specific bar has been created by Parliament. In that view of the matter, the police report being not a Complaint and vice versa, it was obligatory on the part of the Respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the Respondent to file a Complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO." [Emphasis supplied]

24. The learned Senior Counsel would point out that in paragraph 23 of the said judgment of the Hon'ble Supreme Court, the Division Bench Judgment of Kerala High Court in ***Moosakoya v. State,*** cited supra, has been referred to and ultimately, the Hon'ble Supreme Court has agreed with the said observations [*vide* para 20 of this order] of the Kerala High Court. Thus, according to the learned Senior Counsel, the ratio laid down by the Division Bench of Kerala High Court, which has got approval of the Hon'ble Supreme Court, is binding on this Court and accordingly, the FIRs in these cases are liable to be quashed.

25. Before proceeding further, let us also have look into Section 26 of the General Clauses Act, which reads as follows:

> "*(26) Provision as to offences punishable under two or more enactments.*— Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

26. As per the said provision, there can be no doubt that if the act of an Accused constitutes offences falling under two different enactments there can be no difficulty in holding that prosecution can be launched under both the penal provisions, but as per Article 20(2) of the Constitution of India, punishment can be imposed only under one penal statute and not under both. Under Article 20(2) of the Constitution, where a person has been convicted

for an offence by a Court of competent jurisdiction, the conviction is a bar to all further Criminal proceedings for the same offence. Here, the expression "for the same offence" requires to be emphasised. It makes very clear that if the act of an Accused constitutes two offences [under different enactments], which are not the same, then there can be no bar to punish him under both the enactments. In order that the prohibition is attracted, the same act must constitute an offence under more than one enactment. If there are two distinct and separate offences with different ingredients, under two different enactments, punishment under both the enactments will not be bad.

27. In this regard, we may refer to a recent judgment of the Hon'ble Supreme Court, in ***The Institute of Chartered Accountants of India v. Vimal Kumar Surana and another,*** 2011 (1) SCC 534. That was a case where the Accused, who is a graduate in Commerce and has passed examination of Chartered Accountants, but is not a member of the Institute of Chartered Accountants of India [a Statutory body], is alleged to have represented himself before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act, 1995, on the basis of the Power of Attorney or as a legal representative and submitted documents, such as, Audit Report and certificates required to be issued by the Chartered Accountants by preparing forged seals. He is also said to have impersonated himself as Chartered Accountant and prepared audit report for monetary consideration. Based on a Complaint, a case was registered by the Police and charge-sheet was also laid against him for offences under Sections 419, 420, 465, 467 & 473 of IPC r/w Sections 24 & 26 of the Chartered Accountants Act, 1949. Sections 24 & 26 of the said Act read as follows:

"*24. Penalty for falsely claiming to be a member, etc. — Any person who, —*

(i) not being a member of the Institute,

(a) represents that he is a member of the Institute; or

(b) uses the designation chartered accountant, or

(ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a Chartered Accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both."

… … …

"*26. Unqualified persons not to sign documents.— (1)* No person other than a member of the Institute shall sign any document on behalf of a Chartered Accountant in practice or a firm of such Chartered Accountants in his or its professional capacity.

(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may

extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both."

28. The primary question, which came up for consideration before the Hon'ble Supreme Court, was whether the Court was right in taking cognizance on the Police Report, not withstanding the fact that under Section 28 of the said Act, no person shall be prosecuted under the said Act, except on a Complaint made by or under the order of the Council or of the Central Government. It was argued before the Hon'ble Supreme Court that in view of the prohibition contained in Section 28 of the said Act, cognizance taken on the Police Report is bad in law. While considering the said question, in paras 18, 20, 21, 23 & 25 of the judgment, the Hon'ble Supreme Court has held as follows:

"(18) What is most significant to note is that prohibition contained in Section 28 against prosecution of a person except on a complaint made by or under the order of the Council or of the Central Government is attracted only when such person is sought to be prosecuted for contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and not for any act or omission which constitutes an offence under IPC.

... ...

(20) In other words, if the particular act of a member of the Institute or a non-member or a Company results in contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and such act also amounts to Criminal misconduct which is defined as an offence under IPC, then a Complaint can be filed by or under the order of the Council or of the Central Government under Section 28, which may ultimately result in imposition of the punishment prescribed under Section 24 or sub-section (2) of Sections 24-A, 25 or 26 and such member or non-member or company can also be prosecuted for any identified offence under IPC.

(21) The object underlying the prohibition contained in Section 28 is to protect the persons engaged in profession of Chartered Accountants against false and untenable Complaints from dissatisfied litigants and others. However, there is nothing in the language of the provisions contained in Chapter VII from which it can be inferred that Parliament wanted to confer immunity upon the members and non-members from prosecution and punishment if the action of such member or non-member amounts to an offence under IPC or any other law.

... ...

(23) The provisions contained in Chapter VII of the Act neither define cheating by personation or forgery or counterfeiting of seal, etc. nor provide for punishment for such offences. If it is held that a person acting in violation of Section 24 or contravening sub-section (1) of Sections 24-A & 26 of the Act can be punished only under the Act even though his act also amounts to one or more offence(s) defined under IPC and that too on a Complaint made in accordance with Section 28, then the provisions of Chapter VII will become discriminatory and may have to be struck down on the ground of violation of Article 14.

... ...

(25) We may add that the Respondent could have been simultaneously prosecuted for contravention of Sections 24, 24-A & 26 of the Act and for the offences defined under IPC but in view of the bar contained in Article 20(2) of the Constitution read with Section 26 of the General Clauses Act, 1897 and Section 300, Cr.P.C, he could not have been punished twice for the same offence."

29. In para 36 of the said judgment, ultimately, the Hon'ble Supreme Court has laid down as follows:

"*(36)* In view of the above discussion, the argument of the learned Senior Counsel appearing for the Respondent that the Act is a special legislation *vis-a-vis* IPC and a person who is said to have contravened the provisions of sub-section (1) of Sections 24, 24-A, 25 & 26 cannot be prosecuted for an offence defined under IPC, which found favour with the High Court does not commend acceptance."

30. In the said judgment, the earlier judgment of the Hon'ble Supreme Court in ***Jeewan Kumar Raut's case,*** referred to above - placed reliance of by the learned Counsel for the Petitioners in the instant case, was also considered. Referring to Section 22 of the TOHO Act, in para 39 of the judgment, the Hon'ble Supreme Court has held as follows:

"*(39)* The question which fell for consideration *in Jeewan Kumar Raut v. CBI* was whether the Transplantation of Human Organs Act, 1994 (for short "the 1994 Act") is a special law and has overriding effect *qua* the provisions of IPC. This Court referred to Sections 18, 19 & 22 of the 1994 Act and observed: (*SCC pp. 537- 38, paras 22-23 & 25-26)*

"*(22)* 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.

(23) TOHO being a special Act and the matter relating to dealing with offences there under 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. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge of Gurgaon Police Station had no other option but to hand over the investigation to the Appropriate Authority.

... ...

(25) Section 22 of TOHO prohibits taking of cognizance except on a Complaint made by an aAppropriate Authority or the person who had made a Complaint earlier to it as laid down therein. The Respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a Complaint petition only as an Appropriate Authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a Police Report by necessary implication is necessarily forbidden, the question of

its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no Police Report could be filed, sub-section (2) of Section 167 of the Code was not attracted.

(26) 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 authorisation 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."

31. A close reading of the above judgment of the Hon'ble Supreme Court in ***Institute of Chartered Accountants v. Vimal Kumar Surana,*** would make it manifestly clear that if the act of the Accused constitutes offences under more than one enactment and if such offences are two distinct and separate offences with different ingredients, the same shall not be affected by the Doctrine of Double Jeopardy. In such an event, the Accused can be prosecuted and punished under both the enactments.

32. In the cases on hand, the act of the Accused in committing theft of sand from Government land, according to the prosecution, is an offence of theft punishable under Section 379 of IPC as well as an offence punishable under Section 21 of the Mines and Minerals Act.

33. Section 378 of IPC defines 'theft' as follows:

"*378. Theft.*— Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1 : A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 : A moving effected by the same act which affects the severance may be a theft.

Explanation 3 : A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4 : A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5 : The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied."

34. Now, the question is whether the ingredients of Section 378 of IPC are similar to that of the ingredients of Section 21 of the Mines and Minerals Act. As we have already noted, Section 21(1) of the Mines and Minerals Act states that whoever contravenes the provisions of sub-sections (1) or (1-A) of Section 4 shall be punished with imprisonment or with fine or with both.

Now, let us have look into sub-sections (1) & (1-A) of Section 4 of the Act. Sub-section (1) of Section 4 states that no person shall undertake any reconnaissance, prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licences or, as the case may be, of a mining lease granted under this Act and the rules made there under. Sub-section (1-A) of Section 4 states that "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.

35. A cursory comparison of these two provisions with Section 378 of IPC would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. Constitutes an offence punishable under Section 21 of the Mines and Minerals Act, whereas dishonestly taking any movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in Section 378 of IPC are totally different from the ingredients of an offence punishable under Section 21(1) r/w Sections 4(1) & 4 (1-A) of the Mines and Minerals Act.

36. In such view of the matter, in our considered opinion, as held by the Hon'ble Supreme Court in ***The Institute of Chartered Accountants v. Vimal Kumar Surana's case,*** there can well be a prosecution for an offence under Section 379 of IPC as well as under Section 21 of the Mines and Minerals Act simultaneously and the Principle of Double Jeopardy shall not be a bar for such simultaneous prosecution.

37. Now, let us turn to the conditions requisite for initiation of proceedings as dealt with in Chapter XIV of the Code of Criminal Procedure. An offence under Section 379 of IPC is admittedly cognizable and, therefore, in respect of theft of sand from Government land, it will be lawful for the Police to register a case, investigate the same and to lay a final report under Section 173 of the Code, upon which the jurisdictional Magistrate will be well within his jurisdiction to take cognizance as provided in Section 190(1)(b) of the Code of Criminal Procedure. To this extent, we make it clear that there is no conflict between the Mines and Minerals Act and the Code of Criminal Procedure and thus, question of one overriding the other does not arise. Therefore, in such cases, where the cases have been registered only under the provisions of IPC, more particularly, under Section 379 of IPC in respect of theft of sand, the question of quashing the FIRs or any subsequent proceedings does not arise at all.

38. In two of the cases before us, the cases have been registered not only under the provisions of IPC, but also under the provisions of the Mines and Minerals Act. Of course, an offence under Section 21 of the Mines and Minerals Act is cognizable and, therefore, the Police can register a case and investigate [see paragraph 28 of the judgment in ***Jeewan Kumar Raut case***]. It

is too well settled that in an occurrence, apart from the offences which are non-cognizable in nature, if, cognizable offences have also been committed, it is absolutely necessary for the Police to register a case in respect of the entire occurrence and to investigate the case. This legal position has been made clear by Section 155(4) of the Code. Under Section 190 of the Code, on a Police Report in respect of offences of which some are cognizable and the others are non-cognizable, the Magistrate may take cognizance. As provided in Section 21(6) of the Mines and Minerals Act, an offence under sub-section (1) of Section 21 is cognizable and therefore, it is lawful for a Police Officer to register a case as provided in Section 154 of the Code of Criminal Procedure and to investigate the same as per the provisions of the Code of Criminal Procedure. But, the difficulty arises only in the matter of taking cognizance. Section 22 of the Mines and Minerals Act prohibits cognizance being taken except upon a Complaint in writing made by a person authorised either by the Central Government or the State Government. If the act of the Accused constitutes exclusively an offence under the Mines and Minerals Act, it goes without saying that the Police officer on completing the investigation, cannot lay a Final Report because, on such report, the Court cannot take cognizance in view of the bar contained in Section 22 of the Act. If the Act of the Accused makes out an offence under IPC as well as an offence under Section 21 of the Mines and Minerals Act, the registration of the case under both the enactments is not illegal and the police can further investigate into such cases and file a final report confining to the offence under the Indian Penal Code alone. In respect of the offence under Section 21 of the Mines and Minerals Act, it is for an authorised person to file a Complaint before the jurisdictional Magistrate, upon which, cognizance can be taken. As we have already stated, since both the offences are distinct [as the ingredients are different], the trial of both the cases can go as per the Code of Criminal Procedure and finally there can also be punishment under both the enactments.

39. The learned Additional Advocate General relied on the judgment of the Hon'ble Supreme Court in ***State of Orissa v. Sharat Chandra Sahu,*** AIR 1997 SC 1, in support of his contention that cognizance can be taken on a Police Report involving offences under the Indian Penal Code and the Mines and Minerals Act. That was a case where, on a Complaint by the wife of the Accused, a case was registered under Sections 489-A & 494, IPC. It is needless to point out that as per Section 198 of Cr.P.C. the Court can take cognizance only on a Complaint filed by an aggrieved party in respect of an offence under Section 494 of IPC. Therefore, it was contended before the Hon'ble Supreme Court that the registration of the case under Sections 498-A as well as 494 of IPC is not sustainable in view of the bar contained in Section 198 of Cr.P.C. but the Hon'ble Supreme Court repelled the said argument placing reliance on Section 155(4) of Cr.P.C. According to the Hon'ble Supreme Court, though an offence under Section 494 is non-cognizable, while investigating a case under Section 498-A of IPC, which is cognizable, it is

within the competence of the police to investigate the offence under Section 494 as well and to lay final report comprehensively. Here it needs to be noted, that both the offences, under Sections 498-A & 494 of IPC, are governed by the Code of Criminal Procedure and there is no special enactment involved prescribing a special mode of enquiry, investigation or trial.

40. But, in the cases before us, the conflict is between the Mines and Minerals Act and the Code of Criminal Procedure. When there is such a conflict between a special law and a general law, indisputably, the special enactment will prevail over the general law. That is the reason why we are inclined to hold that Section 22 of the Mines and Minerals Act will override Section 190 of Cr.P.C. and, therefore, in respect of offence under the Mines and Minerals Act, cognizance can be taken only on a Private Complaint as provided in Section 22 of the Mines and Minerals Act, and not on a Police Report. Thus, the ratio laid down by the Supreme Court in ***Sharat Chandra Sahu's case*** will not be of any help to the prosecution in the instant cases.

41. At this juncture, we may refer to the Order in G.O.Ms. No.114, Industries (MMC.I) Department dated 18.9.2006, wherein, in exercise of the power conferred on the Government under sub-Section (4) of Section 21 of the Mines and Minerals Act, the Tamil Nadu Government has issued the following Notification:

> "Under sub-section(4) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) the Governor of Tamil Nadu hereby empowers the Police Personnel not below the rank of Inspector of Police to exercise power under the said sub-section (4) of Section 21, within their respective jurisdiction."

42. It is contended by the learned Additional Advocate General that since the Inspector of Police has been authorised by the State Government as per the Government Order cited, an Inspector of Police can investigate into the offence under Section 21 of the Mines and Minerals Act so as to lay a final report. But, we are not persuaded by the said contention for the following reasons.

43. In this regard, we may again recapitulate the facts involved in ***Jeewan Kumar Raut case*** referred to above. In that case, though initially the case was registered by the State Police, it was transferred to the Inspector of Police, CBI who was authorised to file a Complaint under TOHO Act. The Hon'ble Supreme Court held that though the Respondent *viz.*, Inspector of Police, CBI happens to be a Police Officer, he cannot file a final report and instead on completing the investigation, he can only file a Private Complaint as an authorised person, upon which cognizance can be taken. Similarly, in our considered opinion, in view of the authorisation given under Section 22 of the Mines and Minerals Act to the Inspector of Police, on completing the investigation, he can file only a Complaint before the Magistrate in the capacity of an authorised person under Section 22 of the Mines and Minerals Act. On such Complaint, the Court may take cognizance.

44. At this juncture, we may also notice that similar questions, as are before us, came up for consideration before a Division Bench of Allahabad High Court in ***Azad @ Azad Khan v. State of U.P.,*** MANU/UP/1158/2008. After having referred to various provisions of the Mines and Minerals Act and the Code of Criminal Procedure, the Division Bench has held as follows:

> "*12.* Since the Accused person has been charged with offence under Section 379/411, IPC which are cognizable offences, in the circumstances we have no reason to take a view different from the view taken by the Apex Court in *state of Orissa* (supra) that the Police was authorised to investigate the cognizable offence along with non-cognizable offence irrespective of the fact who was the author of the report lodged at the Police Station regard being had to the provisions of Rule 76 which envisages that the officer referred to in Rule 66 may request for the help of the local police for lawful exercise of his powers under these Rules and the local police shall render all possible assistance as may be necessary to enable the officer to exercise the powers under these Rules. The view we are taking in this matter, also finds reinforcement from the decisions cited above."

45. We are in full agreement with the said judgment of the Allahabad High Court. In conclusion, in view of the law laid down in ***Jeewan Kumar Raut's case*** and ***The Institute of Chartered Accountants' case,*** there can be no difficulty in holding that FIRs in the cases before us cannot be quashed. In the light of the said categorical declaration of law made by the Hon'ble Supreme Court, we hold that the judgments in ***D. Sudharshan v. State,*** 2006 (2) MLJ (Crl) 115; ***Muthu and another v. State,*** Crl.O.P.(MD) No.12307 of 2011 dated 16.9.2011; and ***K. Subramani v. State,*** 2007 (1) MLJ 392, have not decided the law correctly. The judgment of the Karnataka High Court in ***K. Srinivas v. The State of Karnataka,*** 1995 Crl.L.J. 3810, does not persuade us in view of the above judgments of the Hon'ble Supreme Court. So, we declare that these three judgments in ***D. Sudharshan v. State,*** 2006 (2) MLJ (Crl) 115; ***Muthu and another v. State,*** Crl.O.P. (MD) No.12307 of 2011 dated 16.9.2011; and ***K. Subramani v. State,*** 2007 (1) MLJ (Crl.) 392, stand overruled.

46. In view of the foregoing discussions, we answer the questions referred to us as follows:

(i) Since, the offences under the Indian Penal Code involved in the cases before us and an offence under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals (Development and Regulation) Act will not exclude the provisions of IPC. Therefore, in respect of sand theft, it will be lawful for the police to register a case as provided in Section 154, Cr.P.C., under Section 379 and other relevant provisions of IPC, investigate the same as per the provisions of the Code of Criminal Procedure and to lay a final report under Section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore,

such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed.

(ii) If an act of the Accused constitutes offences under Indian Penal Code as well as the provisions of the Mines and Minerals (Development and Regulation) Act, the registration of a case both under the provisions of Indian Penal Code and the Mines and Minerals (Development and Regulation) Act is not illegal and the police may proceed with the investigation. However, the police shall file a Police Report only in respect of the offences punishable under the Indian Penal Code and in respect of the offences punishable under the Mines and Minerals (Development and Regulation) Act, he may file a separate Complaint, provided he has been authorised under Section 22 of the said Act.

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

(iv) In respect of offences under the Mines and Minerals (Development and Regulation) Act, the Court shall take cognizance only on a Complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a Police Report.

(v) In the State of Tamil Nadu, so long as the Notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.9.2006 authorising the Inspectors of Police to file Complaints under Section 22 of the Mines and Minerals Act, is in force, on completing the investigation in respect of the offence under Section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a Complaint under Section 22 of the Mines and Minerals Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance.

47. With these answers, we return the case papers to the Registry with a direction to the Registry to list the cases before the Hon'ble Single Judge for disposal.