



2026:AHC:55640

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8142 of 2026

Vikram Singh

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Rajeev Kumar Rai, Sanjay Kumar
Rajbhar

Counsel for Opposite Party(s) : G.A.

Court No. - 81

HON'BLE VIVEK KUMAR SINGH, J.

1. Learned counsel for the applicant is permitted to make necessary correction in the memo of application and the prayer clause, during the course of the day.

2. Heard Sri Rajeev Kumar Rai, learned counsel for the applicant and learned A.G.A. for the State.

3. The present application under Section 528 of B.N.S.S. has been filed for quashing the entire proceedings of Criminal Case No.19827 of 2025 (State Vs. Vikram Singh and others) arising out of Case Crime No.461 of 2025, under Rules 3(1), 72(1), 58 of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021, Police Station Kotwali, District Lalitpur alongwith the charge sheet dated 21.12.2025 as well as cognizance and summoning order dated 23.12.2025, pending in the court of Chief Judicial Magistrate, Lalitpur.

4. The brief facts of the case are that an FIR was lodged by the Mines Inspector against the applicant and co-accused Saurabh Tiwari on 26.04.2025, which was registered as Case Crime No.0461 of 2025, under Sections 318(4), 336(3), 338, 340(2) of B.N.S., Section 3(2)(d) of The Prevention of Damage to Public Property Act, 1984 and Rules 3(1), 58, 72 (1) of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021 (hereinafter referred to as the "Rules, 2021"), at Police Station Kotwali, District Lalitpur. After due investigation, the Investigating Officer submitted

charge-sheet in this case against the applicant and other co-accused. However, it is mentioned in the body of charge-sheet that the applicant had no knowledge regarding the alleged offence and the complaint was made by the applicant himself to the department concerned but since there was some irregularity on the part of the applicant, therefore, charge-sheet was submitted against him under Rules 3(1), 58, 72(1) of the Rules, 2021. The other co-accused were charge-sheeted under the relevant provisions of B.N.S. as well as the Prevention of Damage to Public Property Act, 1984. After submission of charge-sheet, the learned Magistrate took cognizance vide his order dated 23.12.2025 against the applicant and other co-accused. The cognizance was taken by the learned Magistrate upon the police report against the applicant under Rules 3(1), 58, 72(1) of the Rules, 2021.

5. It is submitted by the learned counsel for the applicant that the learned Magistrate has wrongly and illegally taken cognizance of the offence against the applicant under the aforesaid Rules vide his order dated 23.12.2025. The learned Magistrate failed to apply his judicial mind and mechanically proceeded to take cognizance under Rules 3(1), 58 & 72(1) of the Rules, 2021. It is further submitted that the learned court concerned has exceeded its jurisdiction by taking cognizance upon a police report. The learned counsel for the applicant has relied upon various judgments of the Hon'ble Supreme Court as well as of this Court.

6. Per contra, learned A.G.A. vehemently opposed the prayer and submitted that there is no illegality in the cognizance order.

7. I have heard the rival submissions advanced by learned counsel for both the parties and perused the record.

8. For reference Rule 76 of the Rules, 2021 is being quoted as below:-

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."

9. The aforesaid Rule of the Rules, 2021 is very much clear which provides that no court shall take cognizance for any offence under the Rules, 2021 unless a complaint is filed by the District Officer or any other officer authorized by him.

10. 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 authorized 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 us 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."

11. 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 authorized 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 Rules made thereunder.

21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the 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 cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

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."

12. In another case, **State (NCT of Delhi) Versus Sanjay**, reported in **(2014) 9 Supreme Court Cases 772**, the Hon'ble Supreme Court observed

in paragraph-70 that prosecution of the applicant may be initiated in view of Section 22 of the Act, 1957 on the basis of a complaint made by the officer. Paragraph-70 of the said judgment is being quoted as under:-

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

13. Though the aforesaid cases relate to the Act, 1957 and it was held by the Hon'ble Supreme Court that proceedings under Mines and Minerals (Regulation and Development) Act, 1957 cannot go on the basis of charge-sheet. However, in the present case the charge-sheet was filed under the Rules, 2021 but the provision and legal bar in taking cognizance are the same. Therefore, the aforementioned laws settled by the Hon'ble Supreme Court are applicable to the facts of the present case.

14. In the present case, the applicant has been charge-sheeted only for offences under Rules 3(1), 58 & 72(1) of the Rules, 2021. No charge-sheet was submitted by the police against the applicant under any relevant provision of the Indian Penal Code/ Bharatiya Nyaya Sanhita. Therefore, in view of the settled legal position, it is clear that Magistrate cannot take cognizance of offence under the Rules, 2021, on the basis of the charge-sheet. Cognizance may be taken only when the complaint is filed by the authorized officer alongwith the charge-sheet. The learned Magistrate has

illegally and improperly proceeded against the applicant on the basis of the charge-sheet submitted by the Investigating Officer and, while taking cognizance vide order dated 23.12.2025, failed to consider the mandatory provision of Rule 76 of the Rules, 2021.

15. Consequently, the proceedings of the aforesaid case, charge sheet dated 21.12.2025 and cognizance and summoning order dated 23.12.2025, are hereby quashed.

16. The present application under Section 528 of the B.N.S.S. is **allowed**.

17. However, the concerned authorities shall be at liberty to initiate proceedings against the applicant on the basis of a complaint made by an authorised officer. In such eventuality, the learned Magistrate shall follow the procedure prescribed for complaint cases.

(Vivek Kumar Singh,J.)

March 18, 2026
Radhika