



2026:AHC:54065

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 9338 of 2026

Sanjay Kumar Pandey

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	P.H. Vashishtha
Counsel for Opposite Party(s)	:	G.A.

Court No. - 81

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. The present application under Section 528 B.N.S.S. has been filed with the prayer to set aside/ quash the impugned summoning order dated 04.02.2026 passed by the Chief Judicial Magistrate, Fatehpur in Misc. Case No. 1869/2026 [State Vs. Sanjay Kumar Pandey] arising out of Case Crime No.0166 of 2025, under Section 21(4) (A) of The Mines & Minerals (Regulation & Development) Act, 1957 and under Rule 60(2), 60(4), 35, 3, 58, 42(2) ja, & 42 ja of The Uttar Pradesh Minor Minerals (Concession) Rules, 2021 at Police Station Lalauli, District Fatehpur as well as charge-sheet dated 28.07.2025 submitted by the investigating officer against the applicant.
3. The brief facts of the case are that an FIR was lodged by the Mines Inspector against the applicant on 26.05.2025, which was registered as Case Crime No.0166 of 2025, under Section 303(2) BNS, Section 21(4)(A) of the Uttar Pradesh Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "Act, 1957"), and Rules 3(1), 58, 60(2), 60(4) of the Uttar Pradesh Minor and Minerals (Concession) Rules, 2021 (hereinafter referred to as the "Rules, 2021"), at Police Station Lalauli, District Fatehpur. The Investigating Officer concluded the investigation and found that no offence under Section 303(2) BNS was made out against the applicant and the investigation was dropped under the aforesaid section. However, the Investigating Officer submitted charge-sheet against the applicant under Section 21(4)1 of the Act, 1957 and Rules 3, 35, 42ja, 42(2)ja (1), 58, 60(2), 60(4) of the Rules, 2021. Thereafter, the learned Magistrate took cognizance of the offence upon the police report vide his

order dated 04.02.2026.

4. It is submitted by the learned counsel for the applicant that the learned Magistrate has wrongly and illegally taken cognizance of the offence under the aforesaid sections vide his order dated 04.02.2026. The learned Magistrate failed to apply his judicial mind and mechanically proceeded to take cognizance under Section 21(4)1 of the Act, 1957 and Rules 3, 35, 42 ja, 42(2)ja (1), 58, 60(2), 60(4) of the Rules, 2021. It is 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.

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

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

7. For reference Section 22 of the Act, 1957 and Rule 76 of the 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.

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."

8. 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. Similarly in view of Rule 76 of the Rules, 2021, no cognizance can be taken under the Rules, 2021 unless a complaint is filed by the District Officer or any other officer authorised by him.

9. 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."

10. 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."

11. 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."

12. In the present case, the applicant has been charge-sheeted only for offences under Section 21(4)1 of the Act, 1957 and Rules 3, 35, 42(2)ja (1), 58, 60(2), 60(4) of the Rules, 2021. No charge-sheet has been submitted by the police under any relevant provision of the Indian Penal Code/ Bharatiya Nyaya Sanhita. Therefore, in view of the above legal position, it is clear that Magistrate cannot take cognizance of offence under Act, 1957 or 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, failed to consider the mandatory provision of Section 22 of the Act, 1957 and Rule 76 of the Rules, 2021.

13. Consequently, the proceedings of the aforesaid case, the charge-sheet dated 28.07.2025, and the cognizance summoning order dated 04.02.2026, are hereby quashed.

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

15. 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 17, 2026
Radhika