



MMDR ACT & RELATED RULES

RAVI SHANKAR SHUKLA

QUESTIONS & ANSWERS

- **Applicability**

- Section 3 (ad) & Section 14
- Section 3 (e)

- **Offence**

- Prohibitory nature of provisions
- Section 4 & 4 (1A)
- Operation, Transportation, Storage, Cause to Transport or Store
- Rules

QUESTIONS & ANSWERS

- **Penalty**
 - Under the Act {Section 21 (1)}
 - Under the Rule {Section 21 (2)}
- **Eviction**
- **Seizure**
 - Of what
 - By whom
- **Confiscation**

MORE QUESTIONS??

- Can FIR be filed under MMDR Act? If yes, by whom?
- Who can be complainant?
- Who can take cognizance?
- Who can confiscate?
- Prosecution Vs Confiscation?
- Can illegal mining be compounded?
- Who can compound?
- What is the role of the court in compounding?

TOUGH (OR SIMPLE) QUESTIONS

- Can a rule made by the state contravene the provisions of the Act under which the rules have been framed?
- A tale of two judgments
 - Navin Kumar Choudhary vs The State of Jharkhand, 2021
 - *“Under the notified Rules of the State Government, the competent court to order for confiscation of the seized vehicle is the court of Deputy Commissioner and not the court of Chief Judicial Magistrate. Since the court was not empowered to take cognizance of the offence under [Section 21](#) in view of the bar as contained in [Section 22](#) of the Act, therefore, the initiation of confiscation proceeding, by the court of the Chief Judicial Magistrate, was without jurisdiction and non est in the eyes of law. The court below has failed to apply its judicial mind to the provisions of the statute and its interpretation. The order has been passed in contravention of the statutory provisions.”*

CONT...

- Dhananjay Singh Vs State of Jharkhand, 2023

15. Section 21 (4-A) of the Mines and Minerals (Development and Regulation) Act, 1957 has in no uncertain manner envisages *inter alia* the equipment seized under Section 21 (4) of the Mines and Minerals (Development and Regulation) Act, 1957 shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 and the Deputy

7

Commissioner, Dumka is not the court competent to take cognizance of such offence. So the natural corollary is that the Deputy Commissioner, Dumka cannot exercise the power under Rule 11(v) of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 without the order passed by the court competent to take cognizance of the offence punishable under Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957. Perusal of the record reveals that there is no such order hence, this Court is of the considered view that the Deputy Commissioner, Dumka has exercised the jurisdiction which was not vested upon it in confiscating the Poclain machines, the description of which has already been given above.

CONT..

- Hon'ble High Court of Kerala in the case of **Rahul P.U. vs. The Geologist** (decided on 30th Nov 2022), "At the outset, it is to be noted that though prosecution proceedings and confiscation proceedings may arise out of the same set of facts, they are distinct and different.The conferral power of confiscation of vehicles is not dependent on whether a criminal prosecution for commission of offence under the MMDR Act has been launched against the offender. Confiscation is a separate and distinct proceeding from that of trial. I find that Rule 21(4A) clearly provides that 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. Therefore, what is required for a valid seizure is only usage of vehicle to transport minerals without any lawful authority as envisaged in Section 21(4). Absence of the words "whether a prosecution is initiated or not" in Section 21(4A) is of no consequence."

LEGAL POSITION

- The Jharkhand High Court has declared Rule 11(v) of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 as ultra vires to the Mines and Minerals (Development and Regulation) Act, 1957 i.e., the parent Act..
- In Aditya Enterprises vs State, the Hon'ble Court observed, *"As we have already declared the Rule 11(v) as ultra vires, any confiscation proceeding by the Deputy Commissioner of any district within the State of Jharkhand under the Rules is illegal and is without any authority of law and is beyond jurisdiction. Similarly, in these cases, initiation of proceeding.....is hereby held to be without any authority of law and is accordingly quashed and set aside, with the liberty to proceed for confiscation before the Court having power to take cognizance of the offence."*

FURTHER QUESTIONS

- Section 23 C
- Section 15
- A case for Minor Minerals
 - In the case of **Deepak Kumar vs. State of Haryana and others** (Special Leave Petition (c) no. 19628-19629 Of 2009), the Hon'ble Supreme Court took note of the significantly adverse collective impact of violations regarding minor minerals. The court observed that, *"MoEF noticed that less attention was given on environmental aspects of mining of minor minerals since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant. Taking note of those aspects, MoEF constituted a Core Group under the Chairmanship of the Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals, vide its order dated 24.03.2009....The Group held its first meeting on 7.7.2009 and discussed the impact that may be caused by quarrying/mining of minor minerals on riverbeds and ground waters. It was noticed that individual mines of minor minerals being small in size may have insignificant impact, however, their collective impacts, taking into consideration various mines on a regional scale, is significantly adverse."* Accordingly the collective impact of unaccounted, unauthorized and illegal mining/transportation of even small amount of minerals cannot be dismissed and the court cannot connive at such brazen violations."

FINAL QUESTION?

- To Compound or Not to compound ?
 - **T.T.Kuriakose vs Sub Inspector Of Police** (WP(C).No. 14605 of 2015 (A).
 - Kenny's "Outlines of Criminal Law": "It is a misdemeanor at common law to 'compound a felony and perhaps also to compound a misdemeanor; i.e. to bargain, for value, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. ...in as much as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime".
 - "Herein the law does not provide for all and sundry to prosecute an offender and the offence is not under common law. Compounding provisions under various special enactments is an accepted practice. But the intention of the legislature; in this connected case being the protection of environment and maintenance of ecological balance, is the relevant factor, which mandates the compounding provision to be applied looking at the penal provision in the Act and the Rules."

ANY QUESTIONS ??

“Though much is taken, much abides;
and though We are not now that strength
which in old days Moved earth and heaven,
that which we are, we are;
One equal temper of heroic hearts,
Made weak by time and fate,
but strong in will
To strive, to seek, to find,
and not to yield.”

Alfred Lord Tennyson, Ulysses.



Thank You!!