

**IN THE HIGH COURT OF MADHYA PRADESH,**  
**AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL**

**MISCELLANEOUS CRIMINAL CASE No.10036 OF 2021**

**Between:-**

**G.R. INFRAPROJECTS LTD. THR. AUTHORIZED  
REPRESENTATIVE MR MONIT BHATNAGAR PLOT NO. 18TH  
SECTOR 18 NOVUS TOWER 2ND FLOOR GURUGRAM  
(HARYANA)**

**.....PETITIONER**

**(BY SHRI NAVNIDHI PARHARYA, ADVOCATE)**

**AND**

- 1. STATE OF MP. THROUGH POLICE STATION NOORABAD  
DIST. MORENA M.P.**
- 2. MR. VIRENDRA VERMA S/O SHRI RAMMANI VERMA,  
MINERAL INSPECTOR, DISTRICT MORENA**

**.....RESPONDENTS**

**(SHRI LOKENDRA SHRIVASTAVA, PUBLIC PROSECUTOR FOR  
STATE)**

**(SHRI MADHAV KHURANA WITH MS. TRISHA MITTAL,  
ADVOCATE FOR RESPONDENT NO.2)**

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Reserved on	:	26.04.2022
Delivered on	:	30.05.2022

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*This petition coming on for hearing this day, this court  
passed the following:*

Petitioner has filed this petition under Section 482 CrPC for

quashing of FIR dated 14.12.2020 registered at crime No. 297/202 at Police Station Noorabad District Morena M.P. for the offence punishable under Section 379/414 of IPC and Rule 18(1) of The MP Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 and Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and the proceedings arising thereunder.

Brief facts of the case for disposal of this petition are that petitioner-company got a contract by Rail Vikas Nigam Limited for laying and construction of railway tracks, bridges and related civil construction work between Dholpur Railway Station to Antri Railway Station. For carrying out the aforesaid construction work gitti was required. Petitioner-company filed an application before the Collector (Minerals Division) District Gwalior dated 25.02.2019 for seeking temporary permit for excavation of 68,000 Cubic meters of ordinary earth. During pendency of aforesaid application before Collector, Company received demand letter dated 03.05.2019 asking petitioner to pay as royalty Rs. 68,00,000/- @ Rs. 100/- per cubic meter for excavation. Afterwards petitioner/company sought detail of the aforesaid demand of royalty, but company did not get any communication

from respondents. As per Rule 68 of M.P. Minor Mineral Rules, 1996 sub-clause (3) royalty is not payable for ordinary clay/earth where construction work is carried out under the public sector and permission for extraction of the minor mineral may be granted from the concerned Authority, on furnishing proof of the contract. Since petitioner-company is executing a contract for laying of the Railway track on behalf of Railway Vikas Nigam Limited, which is a government company, is entitled to the exemption and is not required to pay any royalty for the extraction of ordinary earth.

Petitioner responded to the demand letter dated 03.05.2019 but when no response has been communicated to the petitioner-company of its response dated 18.10.2019, he approached this Court by filing of WP 26525/2019. In the said WP, the Division Bench of this Court vide order dated 17.08.2020 modified its order dated 17.12.2019 and allowed the petitioner-company to continue work under the contract with the Central Government, subject to furnishing monthly bank guarantees in favour of the Collector Gwalior equivalent to the royalty self assessed by the petitioner-company. In compliance of the interim order, petitioner-company wrote letters to the Collector (Mineral Division) District Gwalior so that it may furnish the Bank

Guarantees. Petitioner received fresh demand letter dated 28.01.2020 issued by the Collector District Morena for a sum of Rs. 68,00,000/- for the issuance of temporary excavation permit. The petitioner-company again informed the Collector about interim order passed by the Division Bench. Despite knowing very well that petition is pending before the Division Bench and interim order has been passed in favour of petitioner, Collector District Morena issued show cause notice to the petitioner-company. In the order dated 17.08.2020 it was also observed “none of the parties shall draw any equity from this interim arrangement”. In compliance of the order passed by Division Bench Company has deposited bank guarantees amounting to Rs. 3,54,50,000/- with Collector Morena. Despite this in reference letter of Judicial Magistrate Morena dated 23.11.2020 Mining Inspector Morena Virendra Verma lodged a written complaint before SHO Noorabad District Morena against petitioner-company. On the basis of said complaint, impugned FIR has been registered against Ashok Sharma and Vidyaram Gurjar who are associates with the Company. Matter was investigated. Both the accused are absconding since registration of crime. Chief Judicial Magistrate Morena gave direction to Mining Inspector in

reference to direction passed in **Jayant Vs. State of M.P.** reported in **2020 SCC Online SC 989**. In the aforesaid judgment, direction has been given to all Chief Judicial Magistrate “ a copy of this order be communicated to the all Chief Judicial Magistrate working in State of Madhya Pradesh with the direction to call for and examine the record and if any illegality or irregularity is found to be committed, the action be taken against the responsible person as is done by the learned JMFC Mandsaur”.

It is submitted that CJM Morena passed an arbitrary order without applying his mind and without arriving at the conclusion that any illegality has been committed, directed the Mineral Inspector, Morena (M.P.) to lodge FIR. As per Rule 68 of the Madhya Pradesh Minor Mineral Rules, 1996 Companies are exempted from giving royalty to the State. Despite direction of Hon'ble High Court, FIR has been registered against petitioner-company. It is also submitted that despite company deposited five bank guarantees amounting to Rs. 3,54,50,000/-, the impugned FIR has been registered. Hence, it is prayed that aforesaid FIR registered against petitioner-Company be quashed.

In reply respondent has submitted that petitioner-company had submitted an application seeking permission to excavate land

bearing survey No. 1666/2 admeasuring 0.5700 hectare situated at Village Jedrua, Noorabad District Morena. Mining Inspector on 6.2.20 during inspector of the aforesaid land found that petitioner company without taking any permission excavated 4080 cubic meter soil and submitted inquiry report on 7.2.20. In a bunch of petitions, coordinate Bench of this court gave direction to all Chief Judicial Magistrate of State to inquire the matter regarding crime related to mines and minerals and give direction. In compliance of aforesaid direction CJM Morena on the information of illegal mining directed the Mining Officer Morena to lodge a report. Till the petitioner could not get permission to excavate the aforesaid land. Due to aforesaid illegal excavation, registered notice has been given to the petitioner but despite giving him ample opportunities, petitioner did not file any reply. Therefore, vide order dated 17.03.2021 Collector Morena as per Section 53 of M.P. Minor Mineral Rules, 1996 imposed penalty of Rs. 67,20,000/- against petitioner-Company. When panchanama of aforesaid illegal mining was prepared. Manager of aforesaid Company and land owner Vidyaram were present. It is also submitted that without permission petitioner company excavated 4080 cubic meter soil due to which FIR has been registered.

Petitioner is free to raise all grounds at the stage of framing of charge. Besides this since the registration of FIR, accused are absconding.

From the side of petitioner is submitted that Coordinate Bench of Indore in **Jayant Vs. State of M.P. 2020 SC Online SC 989** has directed all Chief Judicial Magistrate to examine the record and take action only “if any illegality or irregularity is found to be committed”. It was never intended that against every person FIR should be registered who is carrying out mining activities. Company has regularly deposited bank guarantees towards royalty payable to the excavated mineral. Till today petitioner-company has deposited bank guarantees amount to Rs. 4 crores with Collector Morena.

It is not disputed that petitioner-company is engaged in construction of 3<sup>rd</sup> railway line from Dholpur railway station to Antri railway station, had applied for permission of mining in the land belonging to Vidyaram who also consented with petitioner-company for carrying out excavation on his land. On his application demand notice of the Mining Department to pay Rs. 68 Lakhs has been given to the petitioner-company. Thereafter petitioner-company seeks clarification regarding aforesaid amount

but from the side of Collector (Mineral Division) Gwalior, no communication was made to the Company. Thereafter the Company had filed writ petition bearing No. 26525/19 before the Court. In the said petition the Division Bench of this Court on 17.12.2019 issued following directions:-

*“The principal contention of learned Senior Counsel is that benefit of exemption from payment of royalty for extraction of clay used for construction works is not only available to the public sector, authority, board, local body of the State Government but also under the Central Government in terms of proviso to Sub Rule 3 of Rule 68 of M.P. Minor Mineral Rules, 1996 (for brevity “1996 Rules”). It is further submitted that expression “Government Department of State” found in the aforesaid proviso if read in conjunction with Rule 68 (1) (i) of 1996 Rules, would include Central Government and its authorized contractor (as is the case herein) to be entitled to the said exemption for payment of royalty. It is also submitted that the impugned order dated 03.05.2019 vide P/I levying royalty upon the petitioner who has undertaken the contractual work assigned by the Central Government for laying third railway track between Dhaulpur to Antri, has been issued in ignorance of the aforesaid statutory exemption.*

*Looking to the arguable point involved and the public importance of the project in question which has come to standstill, this Court deems it appropriate to extend benefit of interim direction as follows:-*

*(I) The petitioner shall be allowed to carry out work under the agreement entered into with the Central Government subject to the petitioner furnishing bank guarantee every month equivalent to the royalty calculated at the admissible rate of clay extracted for the said work during every month, in favour of Collector Gwalior, which shall be kept alive till final decision of this petition.*

*(II) The aforesaid interim order shall remain subject to final decision of the present case.”*

The said order was modified by order dated 17.08.2020

which is reproduced below:-



*“After having heard learned counsel for the rival parties, this court is of the considered view that following directions deserves to be passed to resolve the dispute with ultimate object of expediting the project involving public interest :-*

*(1) The petitioner shall, on a monthly basis, furnish bank guarantee equivalent to the royalty self assessed by petitioner based on actual extraction of ordinary clay by petitioner at the rate notified by the State in it's Notification dated 1/1/2020 filed alongiwth I.A.1215/20, as Annexure-P/5.*

*(2) The aforesaid arrangement shall remain subject to final assessment made by Collector at his own level within 15 days of furnishing bank guarantee by petitioner (supra).*

*(3) In case assessment so made by the Collectors is more than the bank guarantee furnished by petitioner; 4 WP.26525.2019 then petitioner shall be obliged to furnish additional bank guarantee equivalent to cover up the deficiency within next 15 (fifteen) days of the assessment made by the Collectors.*

*(4) The aforesaid arrangement and assessment made by the petitioner and as well as the Collectors from time to time shall remain subject to final outcome of this petition and none of the parties shall draw any equity from this interim arrangement.*

*(5) The interim order dated 17/12/2019 stands modified to the extent indicated above.*

*The State and it's functionaries are granted two weeks' time to file additional reply, if they so desire and petitioner thereafter is granted one week's time to file counter, if any.*

*List this case for final hearing at motion stage in the week commencing 7/9/2020.*

*I.R. granted by this court on 17/12/2019 as modified today shall continue till next date of hearing.”*

During pendency of this petition, Division Bench of this Court extended interim relief to the petitioner-company that on submitting royalty with Collector, he be permitted to carry out aforesaid work. Despite this direction against petitioner, offence was registered after issuing direction on 17.12.19 which was modified on 17.8.2020 and on 14.12.2020 the said directions were communicated to the Collector. This is not the case of

respondents that they have not been communicated the directions passed in writ petition 26525/2019 by Division Bench of this Court. Despite this, the Mining Officer lodged the aforesaid FIR.

In light of the aforesaid discussion as well as the precedent law laid down by the Apex Court in **State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.,1992 Supp.(1) SCC 335**, the present M.Cr.C is **allowed** and FIR dated 14.12.2020 registered as crime No. 297/202 at Police Station Noorabad District Morena M.P. for the offence punishable under Section 379/414 of IPC and Rule 18(1) of The MP Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 and Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and the proceedings arising thereunder is hereby quashed.

**(Deepak Kumar Agarwal)**  
**Judge**

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