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THROUGH EMAIL

From

The Director of Prosecution, Haryana,
Bays No. 9 & 10, Sector-14, Panchkula.

To

1. The Director General of Police, Haryana, Panchkula.
2. All District Magistrates, posted in the State of Haryana.
3. All Superintendent of Police posted in the State of Haryana.

Memo No. AP (7)-2019/ 11685-11729

Dated: 28/06/19

Subject:- Standard Operative Procedures (SOPs)

Reference on subject cited above.

This department has prepared Standard Operative Procedure (SOP) on Mines and Mineral Act, regarding investigation and HDR cases. Copies of the same are being sent to your good office with request to consider it and issue necessary instructions/directions in your sub-ordinate officials/officers so that the quality of investigation may be improved and a strong case may be put before the Ld. Criminal Trial Courts for securing the conviction of accused persons.

Enclosed: As above.

Note: Copy of these Standard Operative Procedures (SOPs) are also available at the Departmental website i.e. prosecutionhry.gov.in.

o/c

District Attorney
for Director of Prosecution, Haryana,

Endst. No. AP(7)-2019/ 11730

Dated: 28/06/19

A copy is forwarded to the Additional Chief Secretary to Government of Haryana, Administration of Justice Department, Haryana, Civil Secretariat, Haryana, Chandigarh for information and necessary action, please in continuation this office letter No. AP(7)-2019/9850 dated 03.06.2019 on the subject "*Minutes of the meetings held on 03.05.2019 regarding convection of criminal cases in Sessions Courts, Lower Courts and in Heinous Crime preparation of Action Plan thereof*".

District Attorney
for Director of Prosecution, Haryana,

1 Earnest
From

The Director of Prosecution, Haryana
Bays No. 9&10, Sector-14, Panchkula

To

All District Attorneys
Posted at District Level

Memo No. 9415

Dated:

28/5/19

Sub: Compliance of directions passed by the Hon'ble Punjab & Haryana, High Court in CRM-M-52573 of 2018(O&M) titled Sh. Vishal Bansal Vs. State of Haryana.

R/Sir,

On perusal of the directions issued by the Hon'ble Punjab & Haryana High Court, Chandigarh, following directions are required to be issued for the effective implementation of the Mines & Minerals (Development & Regulation) Act, 1957. It was also decided that all the IO's investigating the cases registered under the Mines & Minerals (Development & Regulation) Act, 1957 should also be aquatinted with the mandatory provisions of the Act. Apart from above. On perusal of the report submitted be District Attorney, Yamuna Nagar it was found that the investigation was carried out by the Investigating Officers in routine and no procedure has been found to the followed as prescribed under the Act. Police Challans i.e. police report submitted under Section 173 Cr.P.C. have also been found to the checked casually.

On receipt of order (oral) dated 11.04.2019 passed by Hon'ble Mr. Justice Sh. Mahavir Singh Sindhu in CRM-M-52573 of 2018(O&M) titled "*Sh. Vishal Bansal Vs. State of Haryana*", the various judgments delivered by the learned trial

-2-

courts in the cases registered with different police stations
Nagar under Section 379,188 IPC and Section 4(1) of Mine:

1957 were perused and on perusal of the same, the followings lacunas/defects have
been observed in the investigation:-

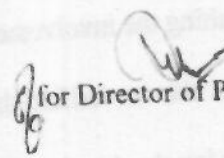
1. No complaint has been found to be filed by the Competent Officer as per requirement of provision of Section 22 of the Act which provides that "No court shall take cognizance of any offence punishable under this Act or any rules made there under except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government". Further, perusal of judgments passed by the learned trial courts in District Yamuna Nagar reveals that mining officer was not joined by the Investigating Agency during the course of investigation.
2. The Investigating Officer has not collected the evidence to prove the identity of the accused as in most of the cases, driver of the vehicle had not been traced out by the Investigating Officer.
3. The photography or videography of the place had not been conducted by the Investigating Officer.
4. No efforts were made by the Investigating Officer to join the independent witnesses.
5. In majority of the cases, the complaints have not been filed by the authorized person of the State or Central Government, only the FIR has been found to be lodged that too without following the proper procedure enshrined under the Mines & Minerals Act (Development & Regulation) Act 1957 so the Ld. Trial Court acquitted the accused for want of proper prosecution.

6. The Investigating Officers have not collected revenue record of the land from where mining was carried out.

The following steps are required to be taken to improve the quality of investigation:-

1. That the complaint shall be filed by the Competent Officer as per requirement of provision of Section 22 of the Act.
2. That the mining officer shall be joined by the Investigating Agency during the course of investigation.
3. That the Investigating Officer shall trace out the driver of the vehicle to establish the identity of the accused.
4. During the course of investigation the Khasra No., Khatauni No. from where the mining was carried out should be mentioned. So as to establish the fact of committing offence.
5. There is need to issue the specific guidelines to the Investigating Agency for making the strict compliance of the provisions of this Act.
6. That the Investigating Officer shall collect necessary documents of the concerned vehicle i.e. registration certificate to prove the ownership of the vehicle involved in committing the crime and recovered during the course of the investigation.
7. That the photography or the videography should be got conducted at the relevant point of time by the Investigation Agency.
8. That while getting the superdari order of the vehicle involved in the crime, no objection certificate should not be issued in routine matter. The authentic evidence establishing the involvement of the owner of the vehicle should be verified. It should also be verified that as to whether the vehicle involved in crime was earlier involved in the alike crime or not.

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9. Owner of the revenue estate from where the mining was carried out should be cited as witness as well as accused if his involvement is *prima-facie* proved.
 10. Independent witness should also be joined at the time of recovery of mined material by the Investigating Agency.
 11. Periodical meeting with the mining staff with the Investigating Agency should be organized by the Investigating Agency for the effective implementation of the Act.
 12. The Prosecution Agency should also bring in the notice of the Investigation Agency about the mandatory provisions of the Act while checking the challan.
 13. Supervisory Officer/Concerned Police Station should also supervise the Investigation by issuing the specific direction to improve the quality of the Investigation.
 14. Previous record of the accused involved in mining should also be obtained during the course of the Investigation so that the same may be produced before the trial courts to prove the act & conduct of accused.
 15. The Investigation Officer should make sincere efforts to weight the mining material alongwith veichle and without veichle with proof of authorized Dharam Kanta.
 16. The Investigation Officer should take the mining officer report that mining material recovered by Investigation Officer is same material which was actually extracted from the field/river/nallah etc.


for Director of Prosecution, Haryana

2/11/19

-5-

Standard Operative Procedure Regarding Investigation.

- (i) Serious / heinous offences should be classified and investigation should be entrusted to selected, trained, experienced and professionally competent investigators. They should not be burdened with other duties viz, VIP Security, maintenance of law and orders etc.
- (ii) Investigators should be fully equipped with that modern scientific tool of investigation.
- (iii) Scrutiny of investigation at different stages, during course of investigation by supervisory officer should be made mandatory. Assistance of legal expert posted in the office of Superintendent of Police may also be obtained. Scrutiny cell, which may consist of DSP, Investigating officers and law officers at each District may be established
- (iv) Interpolations and alterations while recording FIR, statement of witnesses u/s 161 Cr.P.C. should be avoided. The real facts as explained by the complainant and witnesses should be recorded and should be inserted in case diary maintained u/s 172 Cr.P.C.
- (v) Delay in recording FIR should be explained.
- (vi) Prompt inspection of scene of crime and physical evidence available on scene of crime must be protected preserved and collected without wasting time.
- (vii) In heinous crime, FSL team comprising Forensic Expert, in accordance with the nature of crime should be called at place of occurrence and physical evidence should be lifted, packed strictly in accordance with the procedure laid down under the law and as directed by the forensic expert.
- (viii) Disclosure statement should be recorded strictly in accordance with the provisions enshrined u/s 27 of Indian Evidence Act, not in the form of confessional statement.
- (ix) Monogram of seal for the purpose of sealing the articles should be legible and seal after use should preferably be handed over to the public witnesses if available on the scene of crime, not to the police official.

- (x) Complainant / public witnesses must be made aware about the procedure, legal compulsion of the police investigation so that they may repose faith in the police working and depose accordingly.
- (xi) Irregularities in the preparation of search, seizure list should not be made.
- (xii) Right and relevant sections of IPC and local & Special Act may be applied. I.O. may consult the seniors and legal expert before application of section.
- (xiii) Documentary evidence showing the ownership of articles recovered during the course of investigation should be collected and relevant person should be cited as prosecution witnesses.
- (xiv) Direction of law as prescribed under the law should be followed.
- (xv) The name of all relevant persons mentioned in FIR as witness or who have been joined in the investigation must be mentioned in list of PWs to avoid the filling of application u/s 311 Cr.P.C.
- (xvi) Every efforts should be made to recover the weapon of offence used in commission of crime and the origin in case of illegal weapon must be traced. Sketches of weapon, recovery memo should be signed by all relevant witnesses. If the weapon is licensed one, used in commission of crime. it's licence should also be made a part of investigation. Ahlmad of issuing authority must be cited as witness.
- (xvii) Usually stock witnesses cited by the investigating agency turned hostile. Only reliable witnesses should be cited as prosecution witnesses.
- (xviii) In heinous crime, frequent meeting by the supervisory officer with the investigating officers should be conducted. Specific directions to the IOs should be issued by the supervisory officers and entry in this regard must be made in C.D.
- (xix) Training programme to update the knowledge of I.O. about new enactment and amendment with latest judgments should be organised regularly.
- (xx) Scientific and forensic techniques should be adopted during the course of investigation.
- (xxi) Identification test parade of accused should be conducted strictly in accordance with the procedure laid down under rule 26.32 of Punjab Police Rules, 1934.

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- (xxii) Process of lifting of finger prints, foot prints etc including physical evidence from the place of occurrence should be carried out with great care and attention.
 - (xxiii) In case of Drowning Daitom Test should be conducted.
 - (xxiv) Psychological tool of Investigation viz Polygraphy, Brain Mapping etc should also be conducted as per need.
 - (xxv) Pairvi officers should be expert and well acquainted with their function and duties. Evidence regarding previous conviction of accused should be placed.
 - (xxvi) To establish coordination between different segments periodical meetings should be organised.
 - (xxvii) Specific opinion about the injuries caused by specific weapon should be obtained from the Dr. by showing the weapon and wearing clothes having corresponding cut.
 - (xxviii) Copy of Post Mortem Report, FSL Report, Ballistics Report, Handwriting Expert should be collected and placed.
 - (xxix) Phone No. of all the witnesses should be mentioned in the list of witnesses.
 - (xxx) Complete address of witnesses and accused should be mentioned.
 - (xxxi) Adhar Card of accused and public witnesses be attached with the report u/s 173 Cr.P.C.
 - (xxxii) Malkhana Mohrar of the police station be cited as a witness alongwith case property.
 - (xxxiii) Copy of register no. 19 of Malkhana Mohrar be attached with the police report.
 - (xxxiv) Statement of all the witnesses be attached with the police report by mentioning the same in the list of documents attached with the police report.
 - (xxxv) Identification slip and conviction slip must be completed w.r.t. previous record of the accused.
 - (xxxvi) **In the injury cases**, case property i.e. weapons of offence must be taken in a sealed parcel while taking in police possession.
 - (xxxvii) Rough sketch i.e. khaka of the weapons must be prepared. In view of decision of judgment passed by the Hon'ble Punjab & Haryana, High Court photographs of weapon recovered should be taken and should be attached with sketch of weapon

- (xxxviii) Demarcation memo of place of occurrence, site plan of place of occurrence and site plan of place of recovery must be prepared. Demarcation memo and recovery memo must bear signature of the concerned accused.
- (xxxix) Blood stained cloth and blood stained earth must be taken in police possession from the place of occurrence, if available and the same should be sent to FSL.
- (xl) Photographs of place of incidents must be taken during investigation in the injury and accident cases.
- (xli) In the site plan of place of occurrence point of source of light must be shown, if the same was prepared in the night.
- (xlii) Police zimmies must be completed w.r.t. date and time and statement of witnesses must be shown in the police zimminies and case diary should be in bound volume as per the provision of 172 Cr.P.C.
- (xliii) Tehrir must bear the time, place and date from where it was send for lodging the FIR and there should be endorsement of the FIR, which should be signed by concerned official.
- (xliv) Police file and Judicial file must be paginated identically with index.
- (xlv) Sincere efforts must be done to join public witness in the investigation and there should be reference in this regard in the police zimni.
- (xlvi) In the cases where electronic evidence is collected certificate u/s 65-B of Indian Evidence Act must be obtained.
- (xlvii) Call details alongwith Customer Identification Application Form (CIAF), call location, 65-B Certificate must be taken from concerned Nodal Officer and application should be moved to Nodal Officer during investigation so as to preserve the relevant record and not to destroy it as the same is needed at the time of evidence. Investigating officer must appended full name below their signature and I.O. should also ask to other expert witnesses to append their full name below their signature such as doctors etc.
- (xlviii) In the pictorial diagram injuries of the MLR should be shown by the doctor and I.O. should ask the doctor for showing these injuries on the pictorial diagram.
- (xlix) In the 279, 304A IPC cases if the FIR is against the unknown person and unknown vehicle then statement of the person who produced the accused must be recorded by the I.O. in order to prove the link. If the



that alleged land fall in the Municipal Area. This is an important piece of evidence, which is lacking in 90% cases of HDR Act.

- (lix) Original document should be taken in police possession by the I.O. specially in cheating & forgery cases, which is usually not taken by the I.O.
- (lx) Signature of accused must be got compared through hand writing expert of F.S.L. in u/s 420, 407, 468 of IPC cases, which is usually not got compared by the I.O.
- (lxi) Qua source of NDPS Drugs/contraband, no investigations is usually done by Police Officers.
- (lxii) Undue delay in sending samples to FSL must be explained, every endeavour must be made by the I.O./MM to send the samples in the FSL within 72 hours.
- (lxiii) Notice & reply by 50 NDPS must be on separate papers and if there are more than one accused then, notice u/s 50 NDPS Act must be served to each accused separately.
- (lxiv) Report u/s 55 of NDPS Act be endorsed by the SHO.
- (lxv) Report u/s 57 of NDPS be seen by DSP.
- (lxvi) Qua inventory report concerned Magistrate/Reader to such Magistrate must be cited as witness, so as to prove the inventory certificate.
- (lxvii) Practice of deliberately not taking of doctor's opinion qua injury, in grievous injury cases and produce them in the Court in bailable offence, thereafter adding grave offence and do not re-arrest the accused persons, suspects the credibility of police working.
- (lxviii) I.O must join all the persons in investigation to whom actual loss is caused in the cases u/s 406, 420 of IPC.
- (lxix) DNA tests in murder / rape cases and blood group examination should be conducted.
- (lxx) I.O. must join in investigation two independent witnesses out of which one must be the lady, from the locality, which is mandatory in Immoral Trafficking Act cases.
- (lxxi) I.O. must take prosecution sanction order in Arms Act, HDR Act, P.C. Act 2005 cases and must cite concerned witness for proving the sanction order.

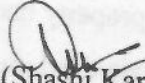
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offending vehicle number is disclosed in the FIR then I.O. firstly should move an application to motor vehicle registering authority to disclosed the name of the owner of the offending vehicle and join him in the investigation.

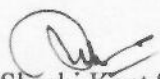
- (i) Superdar of offending vehicle and victim's vehicle must be cited in the list of witnesses along with vehicles by mentioning the registration of the concerned vehicle.
- (ii) Doctors and Registry Clerk etc. must be cited as witness in the list of witnesses by specifically mentioning the record, which they have to produce at the time of evidence, mere mentioning the name of the witnesses is not sufficient.
- (iii) Copy of the docket must be attached with the judicial file, so that it could be clearly ascertained what articles have been sent to the FSL, in case anything necessary, is not sent to the FSL, then, same could be advised to the I.O.
- (iv) If matters / articles send to the FSL in a particular case sent to be different division of the FSL, then Asstt. Directors of the concerned divisions should be separately cited as witnesses, in order to avoid further moving of application u/s 311 Cr.P.C. at the time of trial.
- (v) In the cases u/s 68 of the Excise Act, liquor bottle, glasses etc. must be taken in police possession.
- (vi) Specific test must be conducted by the doctors, so as to detect & estimate consumption of alcohol mere getting the statement regarding denial of blood and urine sample by the concerned accused is not sufficient, because in view of Apex Court judgment Selvi versus State of Karnataka, 2010 Supreme Court, samples could be obtained even by using moderate force upon the accused.
- (vii) In the cases u/s 61 of Excise Act sample must be drawn from each bottle so as to make it representative sample, mere taking of one bottle as a sample from the recovered bottles of liquor is not sufficient.
- (viii) Chemical examiner must be cited as a witness along with its report in cases u/s 61 of Excise Act.
- (ix) In the Haryana Urban Regulation Authority Act (HUR) cases report of Halqa Patwari qua demarcation with respect to alleged Khasra no. etc. must be taken by the investigating officer so that it could be ascertain

- 17-
- (lxxii) Birth Certificate must be verified during investigation from the concerned authority, when the same is produced by the accused for declaring him juvenile.
 - (lxxiii) Extra judicial confession should be corroborated by another independent witness.
 - (lxxiv) In the dowry cruelty cases, proof of alleged dowry articles i.e. bill etc. must be taken in police possession by the investigating officer as far as possible.
 - (lxxv) In many cases it has been observed that accused being superdar is cited as prosecution witness and such practice of citing accused himself as a prosecution witness must be stopped because as per section 315 Cr.P.C. accused cannot depose as a prosecution witness.
 - (lxxvi) Statement recorded u/s 161 Cr.P.C must be inserted in case diary maintained u/s 172 Cr.P.C
 - (lxxvii) Police report prepared u/s 173 Cr.P.C must be filed in the Court within the prescribed period as prescribed u/s 167 Cr.P.C. otherwise the accused if under custody shall be selected from custody on bail.
 - (lxxviii) Police report u/s 173 Cr.P.C may be filed without production of accused.


(Shashi Kant Sharma)
Additional Director
Prosecution, Haryana
Panchkula

S.O.P. for HDR Cases

1. Urban Area plan of site must be proved.
2. Photograph of site should be taken
3. Sanction order by D.M must be placed.
4. Notification to prove the fact whether the land falls within Municipal Limits or not should be attached with report prepared U/s 173 Cr.P.C.
5. Whether the land is dispute as of the controlled Area, or not, proof of the same must be attached.
6. The document/proof showing agricultural land has been sold for residential purpose, must be attached with report prepared U/s 173 Cr.P.C.
7. Demarcation Report shall be prepared to prove the fact that it is land in dispute which has actual been cut into plots and sold by the accused.
8. Whether Colony in dispute is unauthorized Colony?
9. Whether the Colony is included in the list of Collector or not collector rates list for check.
10. Recording of Khasra Number in the complaint.
11. Preparation of report of the site.
12. Urban Area notification must be proved.
13. When the property had been sold for residential/commercial and industrial purposes sale deed must be attached. Photographs and statement of witnesses residing nearby must be recorded.
14. Registered sale deed should be taken into possession by making recovery memo.


(Shashi Kant Sharma)
Additional Director
Prosecution, Haryana
Panchkula