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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 12/04/2023

**CORAM**

The Hon'ble Mr. Justice **G. ILANGO VAN**

**Crl.OP(MD)No.1860 of 2023**

**and**

**Crl.MP(MD)Nos.1635 and 1640 of 2023**

1.Sterlin @ Stepin

2.Paulmani

3.Vijayakumar

: Petitioners/A1 to A3

Vs.

1.The State rep. by

The Inspector of Police,

Eraniel Police Station,

Kanyakumari district.

(In Crime No.779 of 2020)

: R1/Complainant

2.Gnanasigamani,

The Sub Inspector of Police,

Eraniel Police Station,

Kanyakumari District.

: R2/De-facto Complainant

**PRAYER:-** This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the impugned charge sheet in PRC No.40 of 2022 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District and quash the same.

For Petitioners

: Mr.K.Sivabalan

for Mr.G.Aravinthan

For Respondent

: Mr.S.Manikandan

Government Advocate

(Criminal side)

**ORDER**

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This criminal original petition has been filed seeking quashment of the case in PRC No.40 of 2022 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District.

**2.The case of the prosecution in brief:-**

The Sub Inspector of Police, attached to Eraniel Police Station, *suo muto* registered the FIR stating that on 08/12/2020 at about 08.30 pm, along with police team they were on patrol duty near Eraniel Konam Neyyoor turning, at that time, a four wheeler bearing registration No.TN-88-F-2281 (Tipper Lorry) was found driving by its driver. When that was intercepted, enquiry was made, it was found loaded with four units of blue metals. The driver and other person were not having proper licence. On enquiry, they reveal that they were transported the above said blue metals to Thiruvananthapuram. On the basis of the above said occurrence, a case was registered in Crime No.779 of 2020 for the offence under section 379 IPC. After completing the process of investigation, final report was filed and it was taken cognizance in PRC No.40 of 2022 by the Judicial Magistrate, Eraniel.



3. Seeking quashment of the same, this petition has been filed mainly on the ground that proper permission was obtained for transporting the above said blue metals from the competent authority, but an mistake has been committed by the driver and other persons in following the route prescribed and they deviated from the permitted route and because of that only, the above said case has been registered.

4. Heard both sides.

5. To know whether proper permission was obtained by the petitioners, CD file has been called for and perused. Wherein, we find that the above said blue metals were purchased by one B.J.V Agencies, Thiruvananthapuram from Annai Blue Metals, Radhapuram, on 08/12/2020 for a sum of Rs.8,7836/-. Permit has been obtained by the above said Annai Blue Metals, on 05/12/2020 valid upto 12/02/2020. It was issued by the concerned Government Department. Transit pass also given for transporting the above said blue metals between 08/12/2020 and the time of despatch is noted as 04.30 pm. But Form-F has not been properly filled up. The destination is not properly



mentioned. But however, expected time is mentioned as 7 hours. The Lorry number is also mentioned as TN-88-F-2281. So it is seen that after purchasing the above said property from Annai Blue Metals, on 08/12/2020 transit pass was also issued by the competent authority for transporting the same through the above said vehicle. But route map or transporting route is not mentioned in the permit. Whether the place of occurrence namely Eraniel to Thiruvananthapuram route was proper route or not, is also not clear on record. No material has been collected during the course of investigation to show that the route has been changed by the driver and other persons.

6. Now the case of the prosecution is that the this statement by the driver to the effect that they transported the same to unload near Alwarkurichi. But other particulars are not collected during the course of investigation. Even if, we consider that the route change has been made, it is only violation of the permit, which entails the cancellation of the permit and confiscation of the materials and for other penal provisions. Certainly section 379 IPC is not attracted.



7.Theft is defined in section 378 IPC, which reads

as follows:-

**"378.Theft.**-Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation 1.-A thing so long as it is attached to the earth, not being movable property, is not the subject of theft, but it becomes capable of being the subject of theft as soon as it is severed from the earth.*

*Explanation 2.-A moving effected by the same act which effects the severance made be a theft.*

*Explanation 3.-A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.*

*Explanation 4-A person, who by means causes an animal to move, is said*



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*to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.*

*Explanation 5.-The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied."*

8.Here, there is no dispute with regard to the ownership of the belue metals, it was purchased by B.J.V Agencies, Thiruvananthapuram. So the above said Agency is the owner of the property and at the relevant time, no one can commit theft of his own property. So it appears that the prosecution has charge sheeted due to misconception of facts and law.

9.As mentioned earlier, they can be proceeded only for violation of the permit, but certainly not under section 379 IPC. On that sole ground, this criminal original petition is liable to be allowed.



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10. In the result, this criminal original petition is **allowed**. The charge sheet in PRC No.40 of 2022 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

12/04/2023

Index:Yes/No  
Internet:Yes/No

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To,

1. The Judicial Magistrate,  
Eraniel, Kanyakumari District.
2. The Inspector of Police,  
Eraniel Police Station,  
Kanyakumari district.
3. The Sub Inspector of Police,  
Eraniel Police Station,  
Kanyakumari District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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8

G.ILANGOVAN, J

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Cr1.OP(MD)No.1860 of 2023

12/04/2023



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