



Crl.O.P.(MD)No.10953 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 28/06/2023

Date of Pronouncement : 07/09/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP (MD)No.10953 of 2023

and

Crl.MP (MD)Nos.8738 and 8739 of 2023

Reejin Lal : Petitioner/A2

Vs.

State rep. by its
The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
(Crime No.74 of 2022) : Respondent/Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned charge sheet in CC No.1246 of 2022 on the file of the Judicial Magistrate No.1, Kuzhithurai and to quash the same

For Petitioner : Mr.M.R.Seenivasan

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.1246 of 2022 on the file of the Judicial Magistrate No.1, Kuzhithurai



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2.The case of the prosecution in brief:-

The de-facto complainant along with the police team, on secret information, made inspection near Maruthancode, Kulappuram village, on 12/03/2022 at about 04.00 am. At that time, they found one JCB vehicle bearing registration No.TN-32-AL-7103 involved in digging out the sand. They have also loaded the same through Tipper Lorries bearing Registration Nos.TN-74-AT-7088 and TN-75-AE-7531. On seeing the police party, all the persons fled away from that place and some of the persons tried to flee away through a two wheeler bearing registration No.TN-75-AF-6048. On enquiry, they disclosed their name as Thangaraj and Sathasivan. On inspection, the above said tipper vehicles were found loaded with sand. Finding that no proper permission was obtained by the accused, all the vehicles were seized. On the basis of the above said occurrence, a case in Crime No.74 of 2022 was registered for the offence under section 379 IPC. After completing investigation, final report was filed and it was taken cognizance in CC No.1246 of 2022 by the Judicial Magistrate No.1, Kuzhithurai.

3.Seeking quashment of the same, this petition has been filed by the petitioner stating that for the purpose of celebrating the temple festival of Sree Thittamulla



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Devi Kshethram Temple, the Village Panchayat Temple Committee requested the accused to level the land for the purpose of celebration. So only in pursuance of the above said request made by the Temple Committee, they excavated the sand in the nearby area and levelled the same in the temple area. Except that they are not involved in the illegal activity. The sand was not taken, either for sale or any other purpose. So, according to him, the offence under section 379 IPC is not attracted. If at all only, the offence under the provisions of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 will apply.

4.Heard both sides.

5.The second point was not available to the petitioner. The position is more or less settled in the judgment reported in the case of **Pradeep S.Wodeyar Vs. State of Karnataka (2021)11 SCR 985**, which is clarifying the position to the effect that the police has right to register FIR for the offence under section 379 IPC. In respect of the illegal sand mining activity, they can very well file a final report, but the procedure has already been formulated by usual, the final report must also be transferred to the Special Court, if any official



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complaint is filed by the competent authority under the provisions of Mines and Minerals (Development and Regulation) Act, 1959. This is the Procedure for Code, so far as the illegal mining sand theft is concerned. So this ground is not available to the accused.

6.But however, it is admitted by the respondent, who is present before this court stating that the above said sand was taken by the petitioner only for the purpose of levelling the ground only nearby the temple for the purpose of celebration of the temple festival. So, it is seen that the purpose of the above said is a *bona fide* and genuine one. But it ought to have taken, after getting proper permission from the authorities before taking the sand for that purpose.

7.Whether any Rule permits is the next point for consideration.

8.Rule 17 of the Tamil Nadu Minor Mineral Concession Rules, 1959 permits the owner of the property to quarry free of charges of minor minerals on small scale for his own use, for a specific *bona fide* domestic or agricultural purpose on certain conditions. But however, undertaking on a commercial purpose, then it requires proper permission on payment of certain amount, etc.



9. But here, it is not the case of the petitioner that he has taken the above said sand from his own patta land. Reading of the FIR shows that vehicles have been used for the purpose of loading the sand from a pond area.

10. Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959, reads as under:-

“12. Removal of sand, etc., from lands and tanks in-charge of some departments :-(1) *The preceding rules, however, do not govern the removal of sand, etc., from works and lands in-charge of the Public Works Department and tanks in-charge of Revenue Department.*

2[(2)(a) Notwithstanding anything contained in these rules, for quarrying clay, silt, savudu and gravel from the beds of tanks, channels and reservoirs in the State (except Chennai, Kancheepuram and Tiruvallur Districts) under the control of Public Works Department or Rural Development and Panchayat Raj Department, the Executive Engineer, Public Works Department or the Executive Engineer of the Rural Development and Panchayat Raj Department, as the case may be, shall prepare the list of tanks, channels and reservoirs and submit their proposal to the District Collector for removal of clay, silt, savudu and



gravel from the beds of tanks, channels and reservoirs with demarcation of eligible areas and the estimation of quantum of such mineral to be removed in respect of each area along with the conditions to be stipulated for removal of such mineral from the tanks, channels and reservoirs. The District Collector shall notify the said list in the District Gazette.

(b) Any person engaged in the making of pots or any registered Pottery Labourers Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) for making pots, the public for bonafide domestic purpose and the farmers for agriculture purpose be allowed to quarry clay, silt, savudu and gravel, on free of charges from the beds of tanks, channels and reservoirs under the control of the Public Works Department or Rural Development and Panchayat Raj Department which are notified by the District Collector in the District Gazette under this rule 1[after obtaining permission from the Tahsildar of the Taluk concerned] for quarrying:

Provided that the dwelling place or agricultural land of the person concerned and the quarrying place shall be in the same revenue Village or in the adjoining revenue Village. For removal of the above said minerals by any person for agricultural purpose shall produce a certificate issued by the Village Administrative Officer to the effect that they are holding lands in their name or a cultivating tenant as per Adangal Register:



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Provided further that the quantity of silt and clay proposed to be removed for agricultural purpose from the beds of tanks, channels and reservoirs shall not exceed 75 Cubic meters per acre (185 Cubic meters per Hectare) for wet lands and a quantum not exceeding 90 Cubic meters per acre (222 Cubic meters per Hectare) for dry lands once in two years. The quantity of earth, savudu and gravel proposed to be removed for other domestic purposes shall not exceed 30 cubic meters. The quantity of clay proposed to be removed for making pots shall not exceed 60 cubic metres:

Provided also that prior permission shall be obtained from 1[the Tahsildar of the Taluk concerned] for removal of such quantity of minerals from the tanks, channels and reservoirs and the period of permission shall not exceed 20 days :

Provided also that quarrying shall be permitted only in the area demarcated by the Public Works Department or Rural Development and Panchayat Raj Department, as the case may be, and the minerals shall be loaded in the Vehicles brought by the applicant by the Public Works Department or Rural Development and Panchayat Raj Department, as the case may be.



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(c) Any removal of mineral from these lands shall be subject to the following restrictions, namely :—

(i) Pits shall be at a distance of at least twice the height of the bund from the toe of the bund and they shall not be more than one metre in depth (the depth shall be less, if pits one metre deep are likely to expose porous strata) ;

(ii) Clay, silt, savudu and gravel shall not be carted along the tank bund unless the bund is a recognized road or cart-track ; (iii) Bunds shall not be cut to enable to pass ; (iv) Clay, silt, savudu and gravel removed should not be stacked on tank beds, sluice or any other masonry works of the tanks and causeways or slopes of the bunds ; and (v) Vehicles and carts shall not touch any portion of the revetment, sluice or any masonry works of the tanks and cause damage to them.]

(2-A)(a) If the available quantity as estimated by the Public Works Department/Rural Development and Panchayat Raj Department exceeds [222 cubic metres.], subject to the conditions specified in sub-rule (2), quarrying for other than bonafide domestic or agricultural purposes earth, silt, savudu, etc., from the beds of tanks under the control of the Public Works Department or Rural Development & Panchayat Raj Department which are notified by the District Collector in the District Gazette under sub-rule (2), shall be made subject to the previous



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permission being obtained from the District Collector concerned on payment of the cost of minerals and seigniorage fee for the quantity of the above said mineral sought to be removed at the rates specified in Appendix-II to these rules. For obtaining permission, an application shall be submitted to the District Collector in Form in Appendix-VI-C to be accompanied with a non-refundable application fee of Rs. 1,500/- remitted in the District Treasury concerned and with the following documents, namely:-

(i) An affidavit showing the details of areas mineral-wise in each district of the State, which the applicant or any person jointly with him –

- (a) already holds under a quarrying lease;*
- (b) already applied for but not yet granted;*
- (c) being applied for simultaneously;*

(ii) A valid mining no-dues clearance certificate obtained from the Collector of the District in Form in Appendix-VIII to these rules or an affidavit stating that the applicant is not holding any quarry lease in the State and that there are no mining dues to be paid to the Government; and

(iii) An affidavit stating that the applicant has –

- (a) filed up-to-date income tax returns;*
- (b) paid the income tax assessed on him;*



(c) paid the income tax on the basis of the self assessment as provided in the Income Tax Act, 1961 (Central Act 58 of 1962).

(b) The District Collector shall place all eligible applications before a Special Committee constituted by the District Collector consisting of the following officers, namely:-

- 1) District Collector - Chairman*
- 2) Revenue Divisional Officer concerned - Member*
- 3) Project Director, (District Rural Development Agency) - Member*
- 4) Executive Engineer (Public Works Department), in charge of Tanks. - Member*
- 5) Joint Director of Agriculture of the District - Member*

6) Deputy Director or Assistant Director of Geology and Mining of the District, Convener as the case may be.

(c) The Special Committee shall scrutinize the applications and furnish its recommendations to the District Collector within thirty days from the date of placement of applications before the said Committee.

(d) For selection of eligible applicants, the Special Committee shall take into consideration the nature of



proposed usage of minerals, previous experience and performance of the applicant in the field of quarrying and mineral trade and to furnish specific recommendations on the quantity of mineral to be removed and period of permission to be granted. The Special Committee shall also decide as to whether the quantity of minerals removed is granted equally among all eligible applicants or proportionately depending upon the quantity applied for by the applicants:

(e) Based on the recommendation of the Special Committee, the District Collector shall pass orders on the applications.

(f) The period of permission to be granted under this sub-rule shall not exceed three months.

(g) Permission granted under this sub-rule shall not be renewed or extended for any reason including that the person permitted could not mine or remove the mineral for whatever reason. He will not be entitled for refund of any cost or money incurred in the process. If the permitted quantity is not removed within the stipulated period, the applicant will not be entitled for removal of unutilized quantity of mineral.

(h) In the event, it is found that, the permission-holder has removed in excess of the permitted quantity or if any other violation of the conditions of grant of permission is



brought to notice, the permission shall stand cancelled and damages if any to the tank, approach road, etc., will be recovered from him depending upon the excess quantity mined and the extent of damage caused to the tanks. Any cost incurred for the restoration of the tank shall also be recovered from the permission-holder].

(3) Before issuing the notification mentioned in sub-rule (2), the Collector shall consult the Executive Engineer concerned in respect of tanks in charge of Public Works Department.

(4) The village officer shall, every year, report to the Tahsildar or Deputy Tahsildar concerned, the tanks in charge of both the Public Works Department and Revenue Department from which further removal of sand, earth or silt should be prohibited temporarily. They shall also send a report about the tank in charge of the Revenue Department from which such removal may be permitted again. The Tahsildar or Deputy Tahsildar shall scrutinise the lists and submit his proposals to the Collector. On receipt of the reports from the Tahsildar or Deputy Tahsildar, the Collector shall, every year, issue a revised notification if he considers the revision necessary. Extracts from the revised notification shall be sent to the Executive Engineer whenever tanks in charge of Public Works Department are excluded from the list of tanks from which removal of sand, earth or silt had been permitted."



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11.Even as per the above Rules, proper permission must be obtained from the competent authority. But here, absolutely no such permission has been obtained from any of the persons for the purpose of taking the sand out of the pond area. So, it is *per se* illegal in nature, for which the petitioner must be proceeded in violation of the provisions of The Mines and Minerals (Development and Regulation) Act, 1957.

12.But so far as the offence under section 379 IPC is concerned, it is completely out of place and does not attract. Even as per the case of the respondent, the above said sand was taken for the purpose of levelling the ground in the temple area on the eve of the temple festival celebration. So, absolutely there was no intention on the part of the petitioner to commit theft of sand for exploiting the same for commercial purpose. So, apparently section 379 IPC is not made out. But however, the petitioner can be proceeded for the violation of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1959 as per law.

13.For all the reasons stated above, this criminal original petition is **partly allowed**. The case in CC No.1246 of 2022 on the file of the Judicial Magistrate



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No.1, Kuzhithurai, is hereby quashed in respect of the offence under section 379 IPC alone. But however, the petitioner can be proceeded for the violation of Mines and Minerals (Development and Regulation) Act, 1957 as per law. Consequently, connected Miscellaneous Petitions are closed.

07/09/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate No.I,
Kuzhithurai
- 2.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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