HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

<u>CRIMINAL PETITION No.5434 of 2015</u>

<u>ORDER :</u>

This Criminal Petition is filed by the petitioners/Accused under Section 482 Cr.P.C seeking to quash the proceedings in crime No.54 of 2015 on the file of Inkollu Police Station, Prakasam District registered for the offences punishable under Sections 379 I.P.C and Section 21(2) of Mines and Minerals (Development & Regulation) Act.

2) The written report submitted by the Village Revenue Officer to the Sub-Inspector of Police, Inkollu alleging that sand was illegally transporting by the 1st petitioner/A-1 in the lorry bearing No.AP 24 TB 3988 belongs to the 2nd petitioner/A-2 and basing on mediatornama and arrest of the accused, the crime was registered.

3) Impugning the same, the present quash petition is filed on the ground that sand is transporting with all necessary permits and the Assistant Director, Prakasam District has issued the transit form on 01.05.2015 vide Stationary No.AA0226966, necessary tax was also paid to the Commercial Tax Department, in consequence whereof the Commercial Tax Department has issued the bill and therefore the transportation of the sand cannot be termed as an illegal and hence the provisions of offences under Section 379 I.P.C or Section 21(2) of M.M.D.A.R Act are not attracted and prayed to quash the proceedings

4) Heard the learned counsel for the petitioners vis-à-vis respondent Nos.1 and 2 represented by the Public Prosecutor and perused the material on record.

5) As per the expression of the Apex Court in ***State of NCT of Delhi V. Sanjay*** the police registering the crime and investigation for the offence under Section 21(2) of the Mines and Minerals (Development & Regulation) Act is unsustainable but for to follow the procedure prescribed under the provisions of

the Act and it is made clear in the expression that so far as the offence of theft under I.P.C concerned, prosecution can continue since cognizable offence.

6) From the above proposition, the offence under Section 21(2) of the Mines and Minerals (Development & Regulation) Act since not liable to sustain to that extent, the petition can be allowed. However, coming to the offence under Section 379 I.P.C concerned the factual matrix from the very F.I.R averments, it discloses the commission of the crime. Whereas, it is the defence of the quash petitioners in saying that there is valid permit and he paid the tax and it is not an offence of theft. Such defence is left open and the petitioners are given liberty to file said material before the investigating officer as documents filed are only Photostat copies for the investigating officer to consider with reference to any originals or after ascertaining from the Department concerned of its genuineness.

7) Accordingly the criminal petition is disposed of so far as offence punishable under Section 379 I.P.C concerned for nothing to quash but for giving liberty to file any material in showing that there is no offence of theft from the permit or licence or payment of tax, for the investigating officer to consider and in the event of any final report by left open further remedies to work out. So far as the offence under Section 21(2) of the Mines and Minerals (Development & Regulation) Act concerned, the petition is allowed quashing the F.I.R. Needless to say the interim order dated 06.07.2015 in Crl.P.M.P.No.5463 of 2015 of not to arrest shall holds good, pending investigation.

Dr. B. SIVA SANKARA RAO, J

19.11.2015

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