

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.520 of 2010

and M.P.No.1 of 2010

1. Pushpanathan
2. Paramasivam
3. Viji
4. Sankar
5. Raghu @ Raghunathan

..Petitioners/A1 to A5

Vs.

State Rep. by
Inspector of Police
Kannankurichi Police Station,
Salem.

..Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to C.C.No.341 of 2009 on the file of the Judicial Magistrate No.V, Salem and quash the same.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, by all the five accused in C.C.No.341 of 2009 on the file of the Judicial Magistrate No.V, Salem praying to call for the records and quash the same.

2. The brief facts of the case are as follows :

(i) The respondent / Inspector of Police registered a case in Cr.No.1215 of 2009 on the basis of the complaint given by one Muniyappan, who is none other than the Sub-Inspector of Police, attached to the respondent police station. The respondent / Inspector of Police also laid charge sheet against the petitioners herein, for the offences under Section 379 IPC and Section 4(1) r/w 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957.

(ii) The petitioners are alleged to have stealthily removed the magnesite minerals from the poramboke land belonging to the Government without any permission, in order to get wrongful gain and therefore, they committed the aforesaid offences.

3. The learned counsel appearing for the petitioners contends that as per Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, cognizance of any offence punishable under the Act shall be taken by the Court only upon the complaint in writing made by the person authorised in this behalf by the Central Government or the State Government. It is contended that the Inspector of Police is not the authorised person by the Government and therefore, the respondent has no jurisdiction. He further contends that even otherwise no offence as alleged is made out from the materials available on record. It is also contended that when there is special enactment, offence under Section 379 IPC cannot be invoked.

4. The learned Government Advocate appearing for the respondent per contra contends that the State Government has authorised the Inspector of Police as competent authority to lodge complaint, as per G.O.Ms.No.12, Industries (MMC1) Department, dated 02.02.2009 and the offences are made out as per the materials available on record.

5. The respondent / Inspector of Police lodged charge sheet against the petitioners / accused alleging that on 29/30-08-2009 midnight at 00.30 Hrs, the accused 1 to 5 stealthily removed magnesite minerals weighing about 8 tonnes from the poramboke land belonging to the Government near R.K.Mines, Vinayagampatti, Salem in 2 lorries, in order to get wrongful gain and thus they committed the offences under Section 379 IPC and Section 4(1) r/w 21 (4) of Mines and Minerals (Development and Regulation) Act, 1957. For the offence committed on 29/30-08-2009, the respondent / Inspector of Police laid charge sheet on 06.09.2009.

6. As rightly pointed out by the learned counsel appearing for the petitioners, the Court can take cognizance of the offence under the said Act, if the complaint is given in writing by the competent authority authorised by either Central or State Government. According to the learned counsel appearing for the petitioners, the authorised officer under Section 22 of the Mines and Minerals Act is only the District Forest Officer, as per G.O.Ms.No.167, Industries (MMC1) Department, dated 16.06.1994.

7. The learned Government Advocate brought to the notice of this Court, G.O.Ms.No.12, Industries (MMC1) Department, dated 02.02.2009, wherein the Government of Tamil Nadu authorised the District Forest Officer and the Police Personnel not below the rank of Inspector of Police to make complaint in writing to the Court of competent jurisdiction under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957. The

Notification reads thus :

"Under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) and in super cession of Industries Department Notification No.319 published at page 1 in part II section 2 of the Tamil Nadu Government Gazette Extra Ordinary, dated June 22, 1994 the Governor of Tamil Nadu hereby authorises the District Forest Officers and the Police personnel not below the rank of Inspector of Police, to make complaint in writing to the Court of competent jurisdiction for any offence punishable under the said Act or any rules made there under, in respect of cases falling within their jurisdiction."

8. Therefore, on 02.02.2009, the Inspector of Police has also been authorised to prefer complaint in writing for the offences under the Act. Subsequent to the above notification, the occurrence took place and charge sheet was also laid by the respondent / Inspector of Police. Therefore, the contention of the learned counsel appearing for the petitioners that the respondent / Inspector of Police has no jurisdiction under the Act is not sustainable.

9. This Court has gone through the charge sheet and the statements recorded by the Investigating Officer and the offences as alleged in the charge sheet are made out.

10. The contention with respect to Section 379 IPC is concerned, it is suffice to point out that offence under Section 379 IPC can be invoked along with offence under the Special Act.

11. For the aforesaid reasons, this Court does not find any reason to invoke the inherent jurisdiction enshrined under Section 482 of the Code of Criminal Procedure, which is to be sparingly applied in case of abuse of process of law and accordingly, this Criminal Original Petition is liable to be dismissed.

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In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. The learned Judicial Magistrate No.V, Salem is directed to dispose of the C.C.No.341 of 2009 within a period of three months from the date of receipt of a copy of this order and report the same to the Registry.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsvn

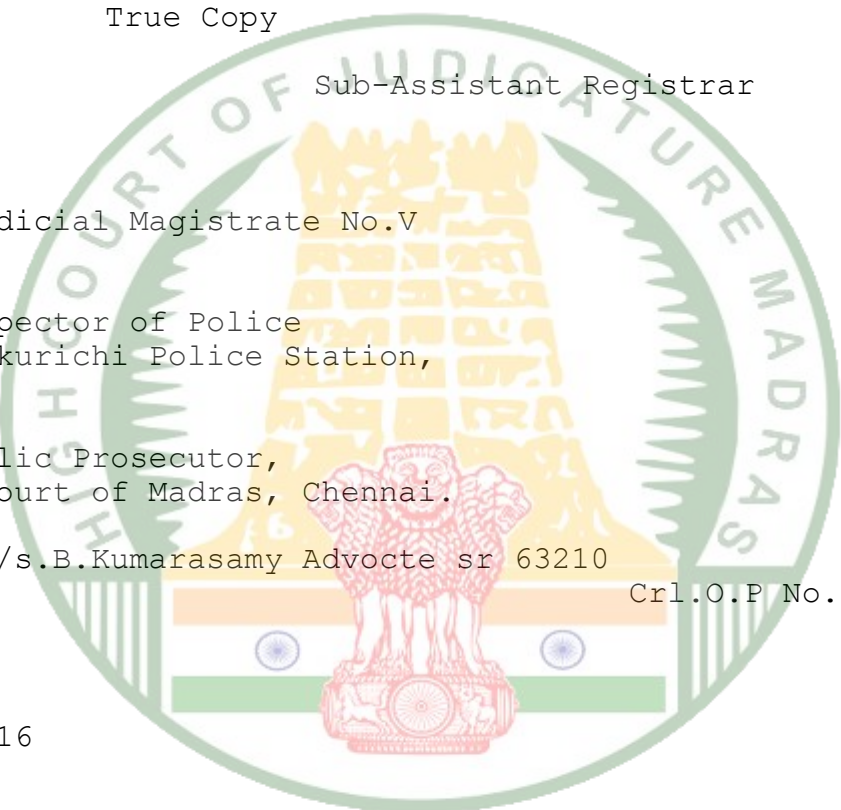
To

1. The Judicial Magistrate No.V
Salem.
2. The Inspector of Police
Kannankurichi Police Station,
Salem.
3. The Public Prosecutor,
High Court of Madras, Chennai.

+1 cc to M/s.B.Kumarasamy Advocte sr 63210

CrI.O.P No.520 of 2010

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The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant. The entire emblem is set against a background of horizontal stripes (orange, white, green) with a red border. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circle around the emblem. Below the seal, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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