

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

CrI.O.P No.10842 of 2010

and M.P.No.1 of 2010

Kumar Transports
Rep.by its Proprietor N.Kumar
S/o. Narasimmalu Reddiar,
No.1, Reddy Street,
Reddipalayam,
Chengalpet Taluk,
Kancheepuram District. ... Petitioner

Vs.

The State of Tamil Nadu
Rep. by the Inspector of Police
Salavakkam Police Station,
Kancheepuram District. .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records from the file of the respondent police in Cr.No.162 of 2009 dated 16.6.2009 on the file of the Inspector, Salavakkam Police Station, Kancheepuram District and consequently quash the same as illegal and unlawful.

For Petitioner : Mr.S.Silambanan, Senior counsel
for M/s. Profexs Associates

For Respondent : Mr.E.Raja
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, praying to call for the records from the file of the respondent police in Crime No.162 of 2009 and quash the same.

2. It is averred in the petition that the respondent police lodged FIR in Cr.No.162 of 2009 alleging that the unnamed accused at the early hours on 16.06.2009 was found loading the river sand by damaging the banks of the river palar and therefore, the respondent police seized the vehicle. The petitioner is the owner of the lorry seized by the police.

3. The respondent police registered case against the unnamed accused along with the petitioner, being the owner of

the vehicle for the offences under Section 21 (1) (5) of Mines and Minerals (Development and Regulation) Act, 1957 and Section 430 IPC r/w Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1984 (herein after referred to as "TNPPDL Act").

4. As per the Mines and Minerals (Development and Regulation) Act, 1957, police personnel has no authority to register the case. Therefore, FIR registered against the petitioner is to be quashed.

5. The learned Senior counsel appearing for the petitioner contends that as per Section 22 of 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 compliant 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.

6. The learned Additional Public Prosecutor 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.

7. The respondent / Inspector of Police registered FIR as against the petitioner / accused along with unnamed accused alleging that on 16.06.2009 early hours, the unnamed accused were loading the sand in the lorry belonging to the petitioner by damaging the banks of the palar river. The unnamed accused fled away on seeing the police and therefore, the respondent police registered the case for the offences under Section 21 (1) (5) of Mines and Minerals (Development and Regulation) Act, 1957 and Section 430 IPC r/w Section 3 of TNPPDL Act in Crime No.162 of 2009.

8. As rightly pointed out by the learned Senior counsel appearing for the petitioner, the Court can take cognizance of the offence under the said Act, if the complaint is given in writing by the competent authority authorised either by Central or State Government. According to the learned Senior counsel appearing for the petitioner, 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.

9. The learned Additional Public Prosecutor 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 supercession 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."

10. 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 petitioner that the respondent / Inspector of Police has no jurisdiction under the Act is not sustainable. Further as per the materials, prima facie offences are made out.

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.

In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

tsvn

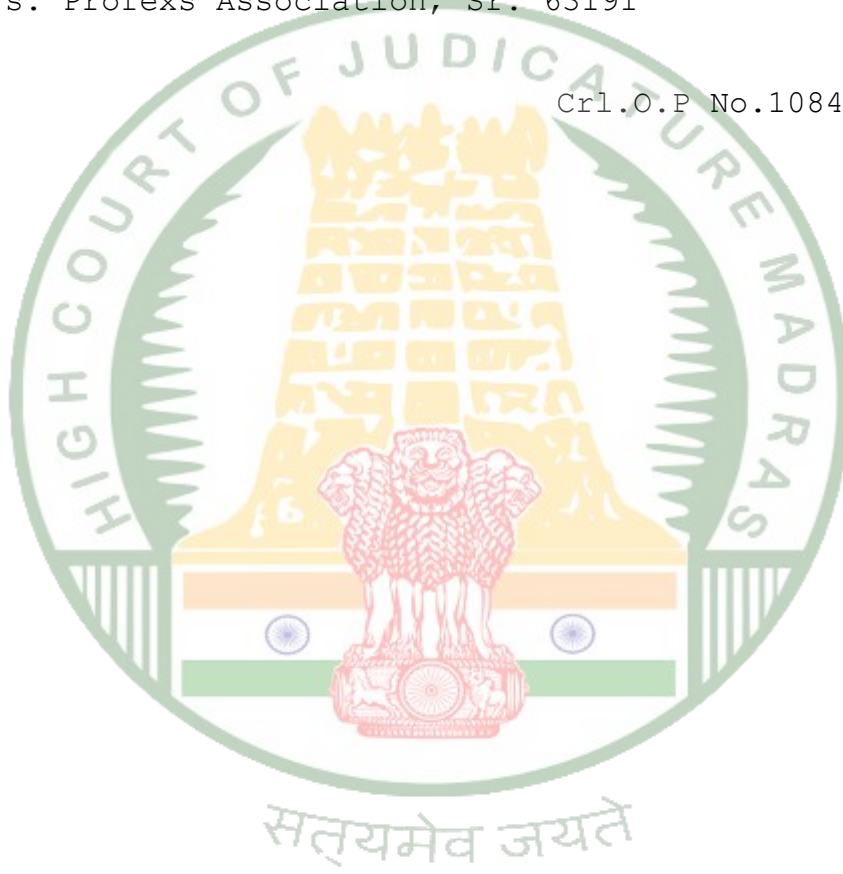
To

1. The Inspector
Salavakkam Police Station,
Kancheepuram District.
2. The Public Prosecutor,
High Court of Madras, Chennai.

1 cc to M/s. Profexs Association, Sr. 63191

Crl.O.P No.10842 of 2010

GJ (CO)
kk 1/12



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