

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

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THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.10844 of 2010

and M.P.No.1 of 2010

T.Ramesh ... Petitioner

Vs.

The State Rep. by its

The Inspector

D-2, Chengalpet Taluk Police Station,

Chengalpet.

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records from the file of the respondent police concerning Cr.No.28 of 2009 on the file of the Inspector, D-2 Chengalpet Taluk Police Station, Chengalpet and consequently quash the same.

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.28 of 2009 and quash the same.

2. It is averred in the petition that the respondent police at 15 hours on 21.01.2009 found that the unnamed accused were loading sand into the lorries by damaging the Banks of Attur palar river and the police seized the lorries under mahazar. The unnamed accused fled away from the scene of crime on seeing the police. The petitioner is the owner of the lorry bearing Registration No. TN 21 L 3969 and he was also added as an accused and a case was registered in Crime No.28 of 2009 for the offences under Sections 430, 379 IPC and Section 3 (1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1984 (herein after referred to as "TNPPDL Act") and Section 21 (1) of Mines and Minerals (Development and Regulation Act), 1957.

3. 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 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.

4. 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 pursuance 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."

5. Therefore, on 02.02.2009, the Inspector of Police has also been authorised to prefer complaint in writing for the offences under the Act.

6. In this case on hand, the occurrence took place on 21.01.2009 and FIR was registered by the respondent police on the same day. Thus, it is prior to the issuance of the above mentioned notification authorising the Inspector of Police to prefer complaint under Section 22 of Mines and Minerals (Development and Regulation) Act, 1957.

7. The learned Senior counsel appearing for the petitioner brought to the notice of this Court the earlier notification of the Government in G.O.Ms.No.167, Industries (MMC1) Department, dated 16.06.1994, authorising only the District Forest Officer under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957.

8. Thus, as per the said G.O issued in 1994, the authorised person has been named as District Forest Officer by the Tamil Nadu State Government. Only on 02.02.2009, the Government included the Inspector of Police as authorised person to prefer complaint under the Act.

9. On the date of registration of the complaint, the respondent police has no authority under the Act to prefer complaint. The present complaint has not been filed by the District Forest Officer. It is found that IPC offences have also been added only to substantiate the offence under Mines and Minerals (Development and Regulation) Act, 1957. Under the Special Enactment, namely Mines and Minerals (Development and Regulation) Act, 1957, when power is conferred on a particular officer only such authorised officer alone can prefer complaint before the Court of Judicial Magistrate.

10. In this case, the officer, who is having no authority as stipulated under Section 22 of the Act registered the case and therefore, the FIR is liable to be quashed.

In fine, this Criminal Original Petition is allowed and the Cr.No.28 of 2009 on the file of the Inspector, D-2 Chengalpet Taluk Police Station, Chengalpet is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Inspector
D-2, Chengalpet Taluk Police Station,
Chengalpet.
2. The Public Prosecutor,
High Court of Madras, Chennai.

Cr1.O.P No.10844 of 2010

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