

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2018

PRONOUNCED ON : 01.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CrI.OP.No.8584 of 2013

and

MP.No.1 of 2013

1. Elangeswaran
2. Mahadevan
3. Selvaraj
4. Senthil Kumar Petitioners/Accused 1-4

Vs.

1. The State
Represented by the Inspector of Police,
Padalam Police Station,
Chengalpattu.
(Crime No.190/2008)1st Respondent/Complainant
2. P.Natarajan (Deceased)
Tahsildar,
Maduranthagam,
Chengalpattu District.
...2nd Respondent/defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.52 of 2013 on the file of the Judicial Magistrate No.1, Chengalpattu and to quash the entire proceedings.

For Petitioners: Mr.R.Muniyappa Raj

For Respondent-1:Mr.T.Shunmugarajeshwaran for R1
Government Advocate (CrI.Side)

WEB COPY
ORDER

This petition has been filed by the accused Nos.1 to 4 to quash the proceedings against them in C.C.No.52 of 2013 on the file of the Judicial Magistrate No.1, Chengalpet, Kancheepuram District.

2. The second respondent herein had lodged a complaint before the first respondent herein on 11.04.2008 stating

that the accused Nos.1 and 2 attempted to transport the river sand illegally and when the same was questioned by him, the accused Nos.1 and 2 criminally intimidated him by using obscene words and also prevented him from discharging official duty. Based on the said complaint, the first respondent registered a case in Crime No.190 of 2008 under Sections 353, 294(b) and 506 (ii) of IPC. Thereafter, he investigated the matter and filed a charge sheet against the petitioners herein, stating that they have committed the offences punishable under Sections 353, 294(b) and 506 (ii) r/w.34 of IPC and and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957.

3. Based on the said charge sheet, the learned Judicial Magistrate No.1 Chengalpet has taken the case on file in C.C.No.52 of 2013. The accused Nos.1 to 4 have filed the present petition under Section 482 of Cr.P.C to quash the proceedings against them in the aforesaid C.C.No. 52 of 2013.

4. Heard Mr.R.Muniyappa Raj, the learned counsel for the petitioners and Mr.T.Shunmugarajeshwaran, the learned Government Advocate (Crl.Side) for the first respondent.

5. The learned counsel for the petitioners has submitted that the second petitioner is doing a lorry business and whenever the persons asked for rental purpose, he will sent the lorry on hire basis. He further submitted that on 11.04.2008, when the second petitioner's lorry came in the G.S.T.road at about 5.30 p.m, for routine purpose, the second respondent intercepted the said lorry and implicated the said lorry in a false case. He further submitted that at about 5.30 p.m., the river mud totally in dark, so no one could take the sand from the river and loaded the same in the lorry. He further submitted that without any light or without any persons, it would not be possible to quarry the sand from the river. He further submitted that in the F.I.R. the name of the petitioners 1 and 2 alone mentioned, but in the charge sheet, the name of the petitioners 3 and 4 also included without any basis. He further submitted that the witnesses have not stated any thing about the overtact committed by the petitioners 3 and 4. He further submitted that in the seizure Mahazar, it was not at all mentioned at what time, the vehicle was seized. He further submitted that the Police had no power to investigate the matter in respect of the offence under Section 21 (1) of Mines and Minerals (Development and Regulation) Act, 1957 and therefore he prayed to quash the proceedings against the petitioners.

6. The learned counsel for the petitioners, in support of the aforesaid contentions, relied upon the following decisions:

i) D.Sudharshan Vs. State, represented by the Inspector of Police, Rajakkamangalam Police Station, Kanyakumari District - (2006) 2 MLJ (Cr1) 115.

ii) Sengol Vs. State Rep. by the Inspector of Police, R.S.Managalam Police Station, Ramanathapuram District (Cr1.OP.(MD) 13173 of 2011 dated 05.01.2012.

iii) K.Subramani and Others Vs. State by Inspector of Police, Nallore Police Station, Salem District - (2007) 1 MLJ (Cr1)392.

iv) State (NCT of Delhi) Vs. Sanjay - (2014) 9 SCC 772.

7. Per contra, the learned Government Advocate (Cr1.Side) Mr. T.Shunmugarajeswaran for the first respondent has submitted that on 11.04.2008 at about 5.30 p.m, when the second respondent was on routine check up along with his team, in Palar river, he found that illegally the river sand was being loaded in a lorry bearing Regn.No.TN-21-K-1449 and asked the persons who were present there as to show their permit for taking sand and at that time, the petitioner No.1 who is the owner of the said lorry used obscene words and criminally intimidated the second respondent and also prevented him from discharging his official duty. Further, the first petitioner's father namely the second petitioner and their relatives namely the petitioners 3 and 4 were also there and they also criminally intimidated the second respondent and also used obscene words and hence, the second respondent with the help of his team had seized the said lorry in a Mahazar and gave a complaint before the first respondent police and based on the said complaint, a case was registered and after investigation, charge sheet has been filed. He further submitted that the second respondent has stated in his statement recorded under Section 161 (3) Cr.P.C that though the petitioners 3 and 4 also present at the time of occurrence, due to tension, he did not mention their names in the complaint. He further submitted that the other witnesses have categorically stated that all the four petitioners were present in the scene of occurrence and committed offences and therefore there is a prima facie case to proceed against the petitioners. He further submitted that the second respondent and other witnesses are public servants and they are not having any motive to give false complaint against the petitioners. He further submitted that there is no bar for the Police to investigate the matter in respect of the offence punishable under Section 21(1) MMDR Act along with IPC offences and therefore he prayed to dismiss the petition.

8. The witnesses have stated in their statements recorded under Section 161 (3) Cr.P.C that all the four petitioners were present in the occurrence place and they prevented the second respondent from discharging his official duty also used obscene words and criminally intimidated him. Hence, it appears that a prima facie case is made out against the petitioners.

9. In D.Sudharshan Vs. State, represented by the Inspector of Police, Rajakkamangalam Police Station, Kanyakumari District (cited supra) the Police had registered an F.I.R under Section 4(1-A) r/w 21 of Mines and Minerals Act, 1957 and under Section 379 of I.P.C . The accused persons have filed a petition under Section 482 of Cr.P.C to quash the F.I.R. A Single Judge of this Court held that in view of the bar under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, the Police had no power to investigate in respect of the offence under Section 4 (1-A), r/w 21 of the Mines and Minerals (Development and Regulation) Act 1957 and also held that the special enactment will override the general provisions of law and hence merely because Section 379 IPC was also included in the F.I.R, it cannot be said that the Police has got the jurisdiction to investigate the offence. Accordingly, the learned Judge has quashed the said F.I.R.

10. In Sengol Vs. State Rep. by the Inspector of Police, R.S.Managalam Police Station, Ramanathapuram District (cited supra), a Division Bench of Madurai Bench of this Court in Paragraph No.46 has observed as follows:

"46. In view of the foregoing discussions, we answer the questions referred to us as follows:-

(i) Since, the offences under the Indian Penal Code involved in the cases before us and an offence under Section 21 of the Mines and Minerals [Development and Regulation] Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals [Development and Regulation] Act will not exclude the provisions of IPC. Therefore, in respect of

sand theft, it will be lawful for the police to register a case as provided in Section 154 Cr.P.C., under Section 379 and other relevant provisions of IPC, investigate the same as per the provisions of the Code of Criminal

Procedure and to lay a final report under Section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore, such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed.

(ii) If an act of the accused constitutes offences under Indian Penal Code as well as the provisions of the Mines and Minerals [Development and Regulation] Act, the registration of a case both under the provisions of Indian Penal Code and the Mines and Minerals [Development and Regulation] Act is not illegal and the police may proceed with the investigation. However, the police shall file a police report only in respect of the offences punishable under the Indian Penal Code and in respect of the offences punishable under the Mines and Minerals [Development and Regulation] Act, he may file a separate complaint, provided he has been authorised under Section 22 of the said Act.

(iii) In any event, if the police officer, files a final report in respect of offences under IPC as well as under Section 21 of the Mines and Minerals [Development and Regulation] Act, the Magistrate may take cognizance of the offences under IPC alone and proceed with the trial.

(iv) In respect of offences under the Mines and Minerals [Development and Regulation] Act, the court shall take cognizance only on a complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a police report.

(v) In the State of Tamil Nadu, so long as the notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006 authorising the Inspectors of Police to file complaints under Section 22 of the Mines and Minerals Act, is in force, on completing the

investigation in respect of the offence under section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a complaint under Section 22 of the Mines and Minerals Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance."

11. In K.Subramani and Others Vs. State by Inspector of Police, Nallore Police Station, Salem District, (cited supra), the Police had registered a case under Sections 120-B, 466, 468, 471 IPC and under Sections 4(1) read with Section 21(1) of Mines and Minerals (Regulation and Development) Act, 1957. After investigation, the police filed a charge sheet. The learned Judicial Magistrate has taken cognizance of the case. The accused filed a petition under Section 482 of Cr.P.C to quash the said case. The learned Single Judge of this Court after referring to Section 22 of the said Act had quashed the proceedings. However, he gave a liberty to the authorized person to lodge a fresh complaint under the said Act.

12. In State (NCT of Delhi) Vs. Sanjay, (cited supra) the Hon'ble Supreme Court in Paragraph Nos.69 to 72 has observed as follows:

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. There cannot be any dispute with

regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission

of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure. "

13. From the aforesaid Division Bench decision of this court and decision of the Hon'ble Supreme Court, it is clear that the offences under the Indian Penal Code (IPC) and an offence under Section 21 of the Mines and Minerals (Regulation and Development) Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals (Development and Regulation) Act will not exclude the provisions of IPC. So, in respect of sand theft, it will be lawful for the police to register a case as provided under 154 of Cr.P.C under Section 379 and relevant portions of IPC and investigate the same as per the provisions of Cr.P.C to lay a final report. If an act of the accused constitutes offences under IPC as well as the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, the registration of a case both under the IPC and the Mines and Minerals (Development and Regulation Act, 1957) is not illegal and the police may proceed with the investigation. However, the police shall file a final report only in respect of the offences punishable under IPC and in respect of the offences punishable under the Mines and Minerals (Development and Regulation) Act, he may file a separate complaint, provided he has been authorized under Section 21 of the said Act, In any event, if the Police Officer files a final report in respect of offences under IPC as well as under Section 21 of the said Act, the Magistrate may take cognizance of the offences and IPC alone. In respect of the offences under the Mines and Minerals (Development and Regulation) Act, the Court shall take cognizance only on a complaint filed by a person authorized in that behalf by the Central Government or State Government.

14. In the State of Tamilnadu, a notification has been issued under G.O.M.S.No.114, Industries (MMC.I) Department dated 18.09.2006 wherein the Inspectors of Police had been authorized to file a complaint under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957. Hence, it will be lawful for the Inspector of Police concerned, as an authorized person, to file a complaint under Section 22 of the said Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance.

15. In this case, the first respondent/police had filed a charge sheet under Sections 353, 294(b) and 506 (ii) r/w 34 of IPC r/w Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. Based on the said final report, the learned Magistrate has taken cognizance in respect of the offences under IPC and also in respect of the offence under Section 21(1) of the Mines and Minerals (Development and Regulation) Act. That is not permissible under law. Based on the police report, the Magistrate could take cognizance only in respect of the offences under IPC. He should not have taken cognizance in respect of the offence under Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, based on the police report. So the proceedings against the petitioners in respect of the offence under Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957, alone has to be quashed.

16. In the result, this criminal original petition is partly allowed. Consequently, connected miscellaneous petition is closed. The proceedings against the petitioners in C.C.No.52 of 2013 on the file of the Judicial Magistrate, No.1, Chengalpet, Kancheepuram District is quashed only in respect of the offence under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. In respect of other offences, this petition is dismissed. It is open to the first respondent to file a separate complaint in respect of the offence under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 by invoking the authorization issued by the notification under G.O.M.S No.114, Industries (MMC.I) Department dated 18.09.2006.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Judicial Magistrate No.1,
Chengalpattu

2. The Inspector of Police,
Padalam Police Station,
Chengalpattu.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Muniyapparaj , Advocate SR.No.19237
(04/09/2019)

Cr1.OP.No.8584 of 2013
and
MP.No.1 of 2013

A.SK(05/04/2019)



WEB COPY