

The Petitioners/Accused Nos.1 & 2, Gangathran, S/o.Mookkaiah Asari, and Murugan, S/o.Pathirakali, have been released on bail as per the order of this Court dated 31.07.2013 made in MP(MD).No.1 of 2013 in Cr1.RC(MD).No.583 of 2013 and made in MP(MD).No.1 of 2013 in Cr1.RC(MD).No.676 of 2013, dated 27.11.2013, respectively.

DATED: 06.09.2019

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Gangathran ...Petitioner
in Cr1.R.C(MD)No.583 of 2013/A1

Murugan ...Petitioner
in Cr1.R.C(MD)No.676 of 2013 /A2

Vs.

State,
Represented by
the Inspector of Police,
Alwarkurichi Police Station,
Tirunelveli. ...Respondent

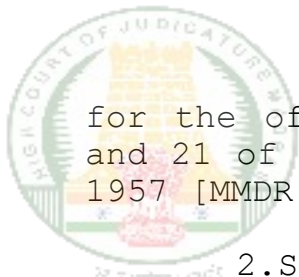
Common Prayer: Criminal Revision Cases have been filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the judgment dated 07.06.2013 made in CrI.A.No.11 of 2013 on the file of the IV Additional Sessions Judge, Tirunelveli, confirming the judgment dated 12.02.2013 made in CC.No.41 of 2011 on the file of the Judicial Magistrate Court, Ambasamudram and set aside the same.

For Petitioner : Mr.T.Antony Arul Raj

For Respondent : Ms.S.Bharathi,
Government Advocate (Crl Side)
in both cases

COMMON ORDER

These Criminal Revision Cases in CrI.R.C(MD)Nos.583 and 676 of 2013 have been filed by A1 and A2 in CC No.41 of 2011 on the file of the Judicial Magistrate, Ambasamudram, respectively, wherein the respondent Police has filed a final report as against these accused



for the offence under Sections 379 of the Indian Penal Code [IPC] and 21 of the Mines and Minerals (Development and Regulation), Act, 1957 [MMDR Act].

2. Since both these Revision Cases arise out of the same case, they are taken up together for hearing and disposed of by way of this common order.

3. These revision petitioners / accused were tried for the offences cited supra, before the learned Judicial Magistrate Court, Ambasamudram in CC No.41 of 2011 and the learned Magistrate by order dated 12.02.2013, acquitted the accused for the offence punishable under Section 21 of MMDR Act, but convicted them under Section 379 IPC and imposed a sentence of six months rigorous imprisonment with a fine of Rs.1,000/-, in default to pay the fine amount, one month rigorous imprisonment was also ordered.

4. As against the order of conviction, the petitioners / accused have preferred an appeal before the Sessions Court, Tirunelveli in C.A.No.11 of 2013 and the same was disposed by order dated 07.06.2013 by the IV Additional Sessions Judge, Tirunelveli, confirming the order passed by the learned Judicial Magistrate, Ambasamudram. As against the order of conviction imposed by the trial Court as well as the appellate Court, these revision petitions have been filed on the following grounds:

(i) As it is a case of transport of sand, offence under Section 379 of IPC as well as 21 of MMDR Act would not be attracted. However, the final report has been filed in a mechanical manner and the trial Court as well as the appellate Court have found the revision petitioners guilty without ascertaining the provisions of law.

(ii) Though the powers have been conferred to the Inspector of Police to exercise powers under Section 21 (4) of MMDR Act, vide G.O.Ms.No.114 Industries (MMC.I) Department, dated 08.09.2006 and such powers can be exercised only by way of a private complaint and the final report filed by the Inspector of Police is bad in law.

(iii) Though the alleged place of occurrence is crowded one, the prosecution has not established the same through any independent witnesses.

(iv) Moreover, there is a contradiction between the evidence of PW.1 and PW.6 with regard to the place of occurrence. According to PW.1, the occurrence was taken place on the Ambai - Tenkasi Road, Keezhambur, opposite to Post Office, whereas, the Inspector of Police / the Investigating Officer [PW.6], has denied the same.

(v) The material object namely sand has not been produced



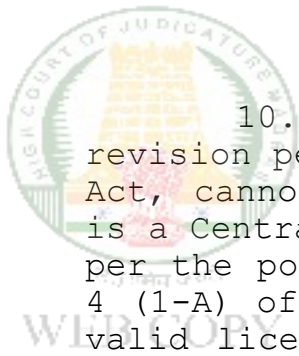
5.Per contra, the learned Government Advocate (Crl Side) would contend that the vehicle has been seized red-handed by the Sub Inspector of Police [PW.1] in the presence of Village Administrative Officer [PW.2] and Village Assistant [PW.3], under a cover of mahazar [Exp.1] and along with Exp.1 the said vehicle was produced before the Court concerned and was also marked as MO.1. The contradiction referred to with regard to the place of occurrence is not proper. It is the case of the prosecution that the occurrence took place on Ambai - Tenkasi Road, Keezhabur in front of the Post Office and it has also been elicited from the observation mahazar [Exp.3] and rough sketch [Exp.4]. It is pertinent to note that the observation mahazar and rough sketch have been prepared by the Investigating Officer [PW.6].

6.Heard the learned Counsel for the revision petitioners and the learned Government Advocate (Crl side) appearing for the State and also perused the materials placed on record.

7.A perusal of the records reveals that on 20.12.2010 at 9.00 am, the Sub Inspector of Police, Alwarkuruchi Police Station, was on vehicle check and at that time she intercepted a TATA Turbo 407 vehicle bearing Registration No.TN 76 1302 and found one unit of river sand illegally transported. The accused did not produce any valid documents for the transit of minerals and therefore, PW.1 seized the vehicle and also registered the case in Crime No.182 of 2010 as against the accused for the offence punishable under Sections 4 and 21 of MMDR Act and Section 379 of IPC.

8. The Inspector of Police [P.W.6], on receipt of the intimation went to the place of occurrence on 20.12.2010 at 12 noon and prepared the observation mahazar [Exp.3] and rough sketch [Exp.4] in the presence of Village Administrative Officer [PW.4] and Village Assistant [PW.5]. He also seized the vehicle and forwarded the same under Form 91 to the concerned Judicial Magistrate Court. After examination of witnesses, he filed the final report as against these revision petitioners / accused, for the offence under Sections 379 IPC and Sections 4 and 21 of MMDR Act, on 29.12.2010.

9.During the trial on the side of the prosecution, six witnesses were examined and four documents were marked. The seized vehicle TATA Turbo 407 bearing Registration No.TN 76 1302 was marked as MO.1 and a sum of Rs.11,000/- recovered from A1 is also marked as MO.2. In conclusion of the trial, the learned trial Judge, acquitted the accused from the offence under Section 21 of MMDR Act, but, convicted the revision petitioners / accused under Section 379 IPC and imposed a sentence of six months rigorous with a fine. The order of conviction and sentence imposed by the trial Court was also confirmed by the appellate Court, as against which, the present revision cases have been filed.



10.The main contention of the learned Counsel for the revision petitioners is that case under Sections 379 IPC and 21 MMDR Act, cannot be registered in the given circumstance. The Mines Act is a Central Act, under Entry I of the Constitution of India, and as per the powers conferred therein MMDR Act has been enacted. Section 4 (1-A) of MMDR Act, prohibits any transport of mineral without any valid licence as offence and it is punishable under Section 21 of MMDR Act. But, as per the powers under Section 21 of MMDR Act, any offence committed under the MMDR Act, it can be registered only by way of private complaint by the District Collector concerned.

11.A Division Bench of this Court while dealing with a similar circumstance, where a case of illegal transport of sand, registered with Section 379 IPC was put to challenge by the accused in **Sengol Vs State of Tamil Nadu**, reported in **(2002) 1 MWN Crl 238** has held 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



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.

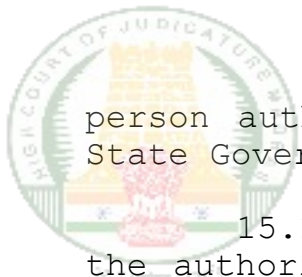
(iv) In respect of offences under the Mines and Minerals [Development and Regulation] Act , the court shall take cognizance only on a complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a police report.

(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.

12. Whenever any person raises, transports without any lawful authority, any mineral from any land and for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing, shall be liable to be seized by an officer or authority specially empowered in this behalf.

13. Under section 21 of MMDR Act, the Government of Tamil Nadu empowers the police personnel not below the rank of Inspector of Police, to exercise powers conferred under Sections 4 and 21, within their respective jurisdiction vide G.O.Ms.No.114 Industries (MMC.I) Department, dated 18.09.2006. Accordingly, in this case the vehicle along with sand has been produced by the Sub Inspector of Police to the Inspector of Police and the Inspector of Police has seized the vehicle along with sand under Ex.P.1 Athakshi. Accordingly, vehicle has been seized and also produced before the concerned Judicial Magistrate in Form 91 by the sub Inspector of Police.

14. As per provision under Section 22 of MMDR Act, no Court shall take cognizance of any offence punishable under MMDR Act or any Rules made thereunder except upon complaint in writing made by a



person authorised in this behalf by the Central Government or the State Government.

15. In this case no such private complaint has been filed by the authorised officer under Section 4(1-A) r/w Section 21 of MMDR Act and therefore, the trial Court as well as the appellate Court rightly acquitted the accused for the offence punishable under Section 4 and 21 of MMDR Act.

16. In view of the order passed by the Division Bench in Sengol's case cited supra, theft of mineral also comes under the definition of Section 378 IPC and an offence under Section 379 IPC can be registered in such cases. Accordingly, in this case offence under Section 379 IPC was registered.

17. Sections 102 and 123 of CrPC authorises the Police Officer to seize certain properties. Any Police officer may seize any property, which may be alleged or suspected to have been stolen or which may have been found under circumstances, which create suspicion commission of offence.

18. As per the powers conferred under Section 102 of CrPC, the Sub Inspector of Police is entitled to seize the vehicle. It is to be noted the seizure of the vehicle has also been reported to the concerned Inspector of Police immediately and on receipt of the intimation, the Inspector of Police has also proceeded to the place of occurrence and prepared observation mahazar and rough sketch.

19. Though the Inspector of Police has denied with regard to the availability of the post office and residence near the place of occurrence, the observation mahazar and rough sketch prepared by the Inspector of Police [PW.6] would disclose that the occurrence took place on Ambai - Tenkasi road as stated by PW.1 and therefore, the statement of PW.6 during the cross examination denying with regard to the place of occurrence cannot be taken as a ground for disbelieving the case of the prosecution. Moreover, in this case, it is the Sub Inspector of Police, who seized the vehicle from the place of occurrence and the Inspector of Police has conducted the investigation based on the report of the Sub Inspector of Police and he has also recorded the presence of Post Office and the residence near the place of occurrence in the observation mahazar and rough sketch Exp.3 and Exp.4 respectively and without verifying the same, in a negligent manner, he has deposed before the Court and it cannot be taken as advantage in favour of the accused.

20. Insofar as the petitioner in Crl.R.C.No.(MD)No 583 of 2013 is concerned, he is the owner and driver of the vehicle bearing Registration No.TN 76 1302 and was caught red-handed at the time of occurrence along with minerals. Whereas the revision petitioner in Crl.R.C.No.(MD)No.676 of 2013 is concerned, he is a cleaner of the said vehicle.



21.It is the case of the prosecution that the vehicle had also indulged in similar such offences previously and the driver cum owner of the vehicle, namely, A1 has also admitted the same and the previous sale amount of Rs.11,000/- was also recovered from A1. Insofar as A2 is concerned there is no recovery from him. But, he was also arrested as he was available in the vehicle at the time of occurrence. He has also projected as that of cleaner of the vehicle. But, the prosecution has failed to establish that the A2 was aware of the theft of the sand and he had also actively indulged in the theft of sand along with A1.

22.As per the definition under Section 378 IPC, whoever intends to take dishonestly any movable property out of the possession of any person without that persons consent, moves that property in order to such taking is said to commit theft.

23.In this case, there is no evidence available to show that A2 has also actively participated in the theft of sand along with A1 or he was aware that the sand transported is without any valid licence. In the absence of any such material, it is not safe to convict A2, for the offence under Section 379 IPC.

24.In the result,

(i) Crl.R.C.No.(MD)No.676 of 2013 is allowed and the order dated 12.02.2013 passed in CC.No.41 of 2011 by the learned Judicial Magistrate, Ambasamudram and the judgment dated 07.06.2013 passed in C.A.No.11 of 2013 by the learned IV Additional Sessions Judge, Tirunelveli in respect of A2, namely, Murugan are set aside and the bail bonds executed by him shall stand terminated and the fine amount, if any paid, shall be refunded to him.

(ii) Crl.R.C.No.(MD)No.583 of 2013 is dismissed and the order dated 12.02.2013 passed in CC.No.41 of 2011 by the Judicial Magistrate, Ambasamudram and the judgment dated 07.06.2013 passed in C.A.No.11 of 2013 by the IV Additional Sessions Judge, Tirunelveli, in respect of A1, namely, Gangatharan are confirmed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk



To

1.The IV Additional Sessions Judge,
Tirunelveli.

2.The Principal District Judge, Tirunelveli.

3.The Chief Judicial Magistrate, Tirunelveli.

4.The Judicial Magistrate, Ambasamudram.

5.The Inspector of Police, Alwarkurichi Police Station,
Tirunelveli.

6.The Superintendent, Central Prison, Palayamkottai,
Tirunelveli.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Record Keeper (2copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-85822 & 85824[F] dated
09/09/2019)

Crl.R.C(MD)Nos.583 and
676 of 2013
06.09.2019

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