



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.11.2019
CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P. (MD) .No.17390 of 2019

and

CRL.M.P (MD) Nos.10240 and 10241 of 2019

Sasi

... Petitioner

Vs.

1.State Represented by
The Sub Inspector of Police,
Kollencode Police Station,
Kollencode.
(Crime No.99 of 2014)

2.B.Solomanrajan

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Charge Sheet in P.R.C.No.6 of 2017, pending before the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District in Crime No.99 of 2014, dated 21.04.2014 on the file of the respondent No.1 and quash the same as illegal as against the petitioner alone.

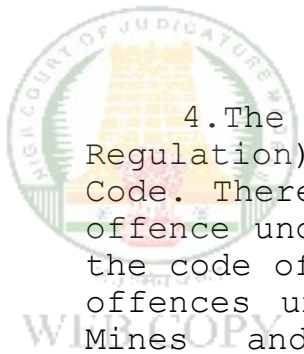
For Petitioner : Mr.J.Pandi Dorai.
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in P.R.C.No.6 of 2017, pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District.

2. On the complaint lodged by the second respondent, the first respondent police registered a case in Crime No.99 of 2014 for the offence under Section 294(b), 379, 307 IPC and 21(4) of Mines and Minerals (Development and Regulation) Act, 1957.

3.The only point for consideration is that the offence under Mines and Minerals (Development and Regulation) Act, cannot be taken cognizance along with other accused. Since the offences under the Indian Penal Code and the offence under Mines and Minerals (Development and Regulation) Act are not same offence under Article 20(2) of Constitution of India.



4.The provisions of Mines and Minerals (Development and Regulation) Act, will not exclude the provisions of Indian Penal Code. Therefore, the police can very well register the case for the offence under IPC and investigate the same as per the provisions of the code of Criminal Procedure. 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 as well as the Mines and Minerals (Development and Regulation) Act, is not illegal and the police may proceed with the investigation.

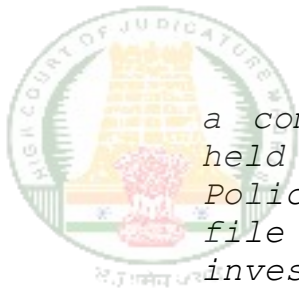
5.However, the police shall file final report only in respect of offence punishable under the Indian Penal Code. In respect of offences under the Mines and Minerals (Development and Regulation) Act, the police officer has to file a separate complaint, he Mines and Minerals (Development and Regulation) Act. The case on hand charge sheet filed for the offence under Indian Penal Code as well as the Mines and Minerals (Development and Regulation) Act. Therefore, the Honourable Division Bench of this Court held that in Crl.OP.(MD)No.14409 of 2011 dated 05.01.2012. The relevant portion of the order is extracted here under:

41. At this juncture, we may refer to the Order in G.O.Ms.No.114, Industries (MMC.I) Department dated 18.09.2006, wherein, in exercise of the power conferred on the Government under sub-Section (4) of Section 21 of the Mines and Minerals Act, the Tamil Nadu Government has issued the following Notification:-

"Under sub-section(4) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) the Governor of Tamil Nadu hereby empowers the Police Personnel not below the rank of Inspector of Police to exercise power under the said sub-section (4) of section 21, within their respective jurisdiction."

42.It is contended by the learned Additional Advocate General that since the Inspector of Police has been authorised by the State Government as per the Government Order cited, an Inspector of Police can investigate into the offence under Section 21 of the Mines and Minerals Act so as to lay a final report. But, we are not persuaded by the said contention for the following reasons.

43. In this regard, we may again recapitulate the facts involved in Jeewan Kumar Raut case referred to above. In that case, though initially the case was registered by the State Police, it was transferred to the Inspector of Police, CBI who was authorised to file



a complaint under TOHO Act. The Hon'ble Supreme Court held that though the respondent viz., Inspector of Police, CBI happens to be a police officer, he cannot file a final report and instead on completing the investigation, he can only file a private complaint as an authorised person, upon which cognisance can be taken. Similarly, in our considered opinion, in view of the authorisation given under Section 22 of the Mines and Minerals Act to the Inspector of police, on completing the investigation, he can file only a complaint before the Magistrate in the capacity of an authorised person under Section 22 of the Mines and Minerals Act. On such complaint, the Court may take cognizance.

44. At this juncture, we may also notice that similar questions, as are before us, came up for consideration before a Division Bench of Allahabad High Court in Azad @ Azad Khan Vs. State of U.P. reported in MANU/UP/1158/2008. After having referred to various provisions of the Mines and Minerals Act and the Code of Criminal Procedure, the Division Bench has held as follows:- "12...Since the accused person has been charged with offence under Section 379/411 IPC which are cognizable offences, in the circumstances we have no reason to take a view different from the view taken by the Apex Court in state of Orissa (supra) that the police was authorised to investigate the cognizable offence along with non-cognizable offence irrespective of the fact who was the author of the report lodged at the police station regard being had to the provisions of Rule 76 which envisages that the officer referred to in Rule 66 may request for the help of the local police for lawful exercise of his powers under these rules and the local police shall render all possible assistance as may be necessary to enable the officer to exercise the powers under these rules. The view we are taking in this matter, also finds reinforcement from the decisions cited above."

We are in full agreement with the said judgement of the Allahabad High Court.

45. In conclusion, in view of the law laid down in Jeewan Kumar Raut's case and The Institute of Chartered Accountants' case, there can be no difficulty in holding that FIRs in the cases before us cannot be quashed. In the light of the said categorical declaration of law made by the Hon'ble Supreme Court, we hold that the judgements in D.Sudharshan v. State, (2006) 2 MLJ (Cr1) 115, in Muthu and another v. State, in Crl.O.P.(MD)



No.12307 of 2011 dated 16.09.2011 and in K.Subramani v. State, (2007) 1 MLJ 392 have not decided the law correctly. The judgement of the Karnataka High court in K.Srinivas v. The State of Karnataka, 1995 Cr1. L.J. 3810 does not persuade us in view of the above judgements of the Hon'ble Supreme Court. So, we declare that these three judgements in D.Sudharshan v. State, (2006) 2 MLJ (Cr1) 115; Muthu and another v. Stat in Cr1.O.P.(MD) No.12307 of 2011 dated 16.09.2011 and in K.Subramani v. State, (2007) 1 MLJ (Cr1.) 392 stand overruled.

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.

6.With the above dictum laid down by the Honourable Division Bench of this Court is clearly place to the case on hand.

7.With the forgoing discussions, this Criminal Original Petition is partly allowed. The proceedings in P.R.C.No.6 of 2017 is hereby quashed insofar as the offence under Section 21(4) of Mines and Minerals (Development and Regulation) Act, 1957. Insofar as the other offences of Indian Penal Code, the trial Court is directed to proceed with the trial.

8.The learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District is directed complete the committal proceedings and refer to the trial Court within a period of two weeks from the date of receipt of a copy of this order. However, the first respondent is at liberty to proceed with the separate complaint in respect of offence punishable under Section 21(4) of Mines and Minerals (Development and Regulation) Act, 1957, he has been authorised under Section 21(4) of Mines and Minerals (Development and Regulation) Act, 1957.

9.Further, the petitioner is now in abroad, because of his absence, the trial proceedings is pending. Therefore, the petitioner is directed to appear before the trial Court as required by the trial Court, without fail.



10.This Criminal Original Petition is disposed of accordingly.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

das

To

1.The Judicial Magistrate No.II,
Kuzhithurai, Kanyakumari District.

2.The Sub Inspector of Police,
Kollencode Police Station,
Kollencode.

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

CRL.O.P. (MD) .No.17390 of 2019
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