

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.14488 of 2020

and

Cr1.M.P.Nos.5530 & 5531 of 2020

G.G.R.Tamilmani,
Age 25 years, A4
S/o.G.Ravi,
No.5, Vaidavasudevan Street,
Vellore-4.

... Petitioner

.Vs.

1. The State rep by its
Inspector of Police,
Sathuvacheri Police Station,
Vellore District.
(Crime No.1185 of 2020)

2. S.Muralidharan,
The Sub-Inspector of Police,
Sathuvacheri Police Station,
Vellore District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records in Crime No.1185 of
2020 dated 27.08.2020 on the file of the respondent police and
quash the same.

For Petitioner : Mr.R.John Sathyan
for Mr.E.C.Ramesh

For Respondents: Mr.S.Karthikeyan
Additional Public Prosecutor

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ORDER

This petition has been filed for challenging the FIR
registered in Crime No.1185 of 2020 for the offence punishable
under Sections 379, 430 IPC and 21(1) of Mines & Minerals
(Development & Regulations) Act, 1957.

2.The learned counsel appearing for the petitioner would submit that, though the petitioner is named in the FIR, his rank has not been mentioned. The petitioner has been impleaded as an accused only on the statement recorded from the first and second accused. According to the confession statement, the first and second accused, as per the instruction of the petitioner herein, they have taken river sand from Palar river without any permission or license. Except this statement from first and second accused, there is no other material to connect the petitioner to implead as an accused in Crime No.1185 of 2020.

3. He further submitted that the petitioner is the Civil Contract worker under the Public Work Department as well as the Highways Department. He is also carrying Msand unit business only in Vellore locality. Therefore, he is no way connected with the other accused persons and only due to vengeance as against the petitioner, the other accused persons have falsely implicated the petitioner in the crime committed by them. Therefore, he sought for quashment of the FIR.

4.The learned Additional Public Prosecutor appearing for the respondents would submit that the FIR was registered only on 27.08.2020 and investigation is pending with the first respondent. Though the petitioner has been implicated as an accused on the statement recorded from the first and second accused, after investigation only it will come to light whether the petitioner had instructed the first and second accused to take river sand from Palar river or not. Therefore, he sought for dismissal of the quash petition.

5.Heard learned counsel appearing for the petitioner and learned Additional Public Prosecutor appearing for the respondents.

6.There are totally four accused one Manikandan and Karthik are ranked as first and second accused insofar as the petitioner and another one Samual, they are not ranked as accused in the FIR. On a perusal of the FIR and the statement recorded from the first and second accused, the petitioner has been implicated as an accused. According to the first and second accused, as instructed by the petitioner herein, they have taken river sand from the Palar river. Therefore, there is a specific overtact as against the petitioner herein. Further, the investigation is still pending and as such at this stage the FIR cannot be quashed on that ground.

7.It is seen from the First Information Report that there are specific allegations as against the petitioner to attract the offences, which has to be investigated in deapth. Further the FIR is not an encyclopedia and it need not contain all facts

and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019 dated 12.02.2019 in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.*, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior

Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, the first respondent is directed to conduct investigation on this aspect, whether the petitioner instructed the first and second accused to take river sand from the Palar river and if no other material is available to connect the petitioner herein. The second respondent is directed to file a final report accordingly within a period of twelve weeks from the date of receipt of a copy of this order before the jurisdiction Magistrate. Further till the filing of final report the petitioner shall not be arrested.

10. With the above direction this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

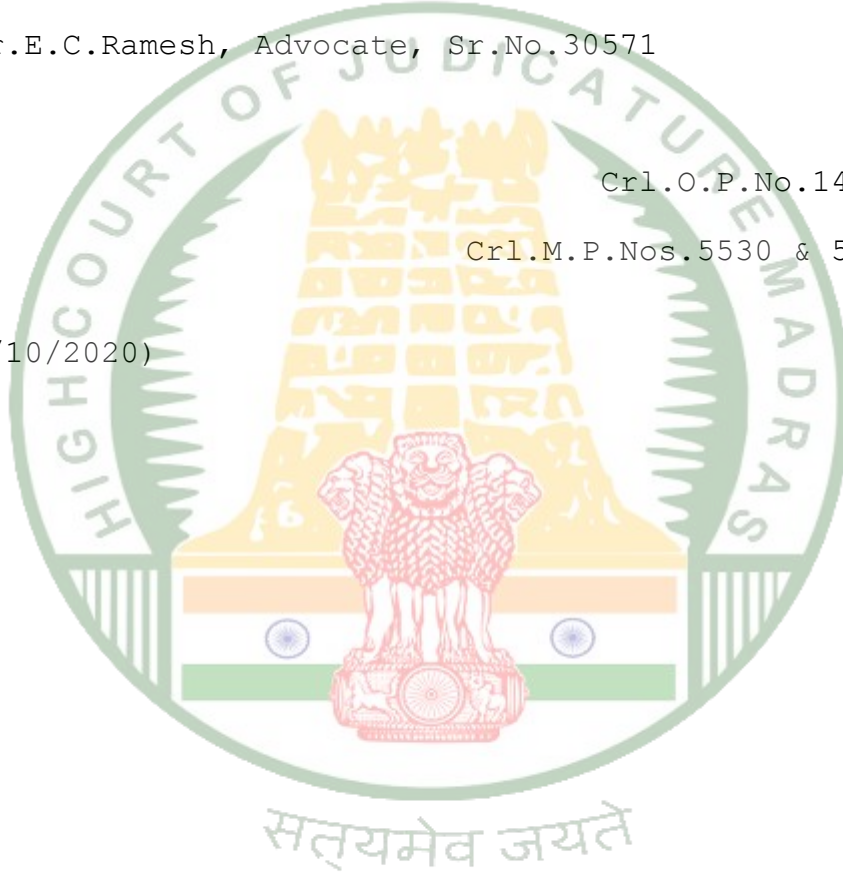
1. The Inspector of Police,
Sathuvacheri Police Station,
Vellore District.
2. The Sub-Inspector of Police,
Sathuvacheri Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.C.Ramesh, Advocate, Sr.No.30571

Crl.O.P.No.14488 of 2020
and

Crl.M.P.Nos.5530 & 5531 of 2020

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