IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2020
PRONOUNCED ON : 31.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1010 of 2020

R.Stalin
S/o.P.Rajagopal ... Petitioner

Vs.

The Inspector of Police,
Ponnai Police Station,
Vellore District.
(Crime No.166 of 2019). ... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the learned Principal and Session Judge at Vellore in Crl.MP.No.5132/2019 dated 07.11.2019 and consequently release the vehicle Tractor and trailer bearing Registration No.TN-21-A-4383 from the respondent.

For Petitioner : Mr.R.Ramesh
For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

In continuation and conjunction to the order passed by this Court dated 07.12.2020, this Court is inclined to pass the following order.

2.It is seen that in majority of the cases, either the case has been registered by the respondent Police based on the complaint given by the Revenue Authorities or by the officials of the Mines and Minerals Department, the case properties/vehicles are taken into custody. After registration of FIR, despite specific order of the Division Bench of the Madurai Bench of Madras High Court in Review Applications (MD) Nos.80 to 82 of 2019 in W.P(MD).No.19936 of 2017, 7595 and 21485 of 2018 that the Police as well the authorized officers are directed to inform the registration of the case to each other within a week, the same is followed in breach. Due to which, there have been no complaint filed as per Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957. The

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prosecution under the Indian Penal Code and the Mines and Minerals (Development and Regulation) Act, 1957 are distinct as held by the Hon'ble Apex Court in the case of "State (NCT of Delhi) Versus Sanjay reported in (2014) 9 Supreme Court Cases 772", which has been reiterated by the Division Bench of this Court and gave various guidelines that the complaint by the authorized person to be made immediately not later than one week from the date of seizure. Both the complaint registered by the Police and the complaint of the authorized person to be tried by the same Court. As per Section 30 (B), the Special Courts have come in place.

3.In most of the cases, FIR's are filed before the Magistrate Court in which charge sheet are yet to be filed and committed to the Special Court. The authorized person have not initiated any complaint. It is seen that the authorized persons, who lodged complaint to the jurisdictional Police have not filed any complaint under Mines and Minerals Act. This is in clear violation of the directions of this Court.

4.The learned Additional Public Prosecutor produced G.O. (Ms).No.170 (Industries (MMC.2) Department), dated 05.08.2020 and submitted that the guidelines have been issued to all the officers concerned, including the authorized officer to follow the directions of the Division Bench of the Madurai Bench of Madras High court. Despite the same, the anomaly still exists. He further submitted that in the Government Order, in addition to the authorised authorities, jurisdictional Inspector of Police are also authorised to make a complaint in writing by way of affidavit under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957. As per Section 2(d) of Cr.P.C., the complaint does not include the police report. No doubt the cases under the Mines and Minerals (Development and Regulation) Act, 1957 are cognizable offence. The inclusion of Police personnels viz., the Inspector of Police as authorized, had created a grey area. The Division Bench of the Madurai Bench of Madras High Court, had clearly held revenue official/officer authorized is only to seize and not confiscate or dispose the mineral, tool, equipment, vehicle etc., and the same to be dealt only by the Special Court. It is seen that despite issuance of G.O.(Ms).No.170 (Industries (MMC.2) Department), dated 05.08.2020, the situation has not improved. Further, the Madurai Bench of this Court, as early in the year 2012, in the case of "Sengol & others Versus State reported in 2012 Crl.J 1705" had clearly held that the ingredients under Section 378 IPC and offence punishable under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are distinct and there is no quarrel about it. The Apex Court in the case of "State (NCT of Delhi) Versus Sanjay" (cited supra), issued guidelines in this regard and highlighted the importance

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of curbing illicit sand mining and plundering of natural wealth and it would be beneficial to extract relevant paragraphs:-

> "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 riverbed. 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 ecosystem of the rivers and safety of bridges. It also weakens riverbeds, 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 groundwater levels.
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> 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 authorised 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 authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the 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 is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.
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> 71.However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel 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

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State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

72.From a close reading of the provisions of the 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, gravel and other minerals from the river, which is the property of the State, out of the 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 persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

73.After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly.”

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5.It is clearly held that compounding the offence under section 23(A) of the Mines and Minerals (Development and Regulation) Act, 1957, would no way absolve the offender. Further despite this Court's specific direction to the concerned authorities, the authorities failed to get sensitized and become aware of seriousness of the offence. Hence, the issuance of G.O.(Ms).No.170 (Industries (MMC.2) Department), dated 05.08.2020, appears to be only in paper, not in action.

6.It is submitted by the learned Additional Public Prosecutor that in view of Section 23(A) of Mines and Minerals (Development and Regulation) Act, 1957, after compounding the offence, it would be difficult for the authorities to file a complaint. Further, authorizing the Police personnel to file a complaint would be against Section 2(d) of Cr.P.C. The inclusion of Police Officials to file a complaint may be a abrasion. The Police personnel referred in G.O.(Ms).No.170 (Industries (MMC.2) Department), dated 05.08.2020, are only in addition to the Revenue Authorities, the officials of the Mines and Minerals and authorised officers. The addition of Police Officials as authorised officers would no way take away the right and be an obstacle to the other authorised officers to file a complaint as contemplated. Further, compounding of offence under Section 23(A) of the Mines and Minerals (Development and Regulation) Act is only with regard to the loss of revenue to the State and not the offence. The anomaly, if any felt, in issuance of Government Order, the same can be rectified. The Act is clear on these aspects, which is further clarified by the Division Bench of Madurai Bench of Madras High Court in its order.

7.The learned Additional Public Prosecutor relied on the judgment of the Apex Court in the case of "Jayant Etc., Versus The State of Madhya Pradesh in Criminal Appeal Nos.824-825 of 2020", for the preposition that once the case under MM DR Act is compounded, whether a complaint can be filed under Section 22 of MM DR Act.

8.The view of this Court is that the grey area pointed out found in G.O.(Ms).No.170 (Industries (MMC.2) Department), dated 05.08.2020, will no way absolve the rights and duties of the authorized officers in filling the complaint before the designated Special Court. The case property if already handed over to the Police and the Police investigation is pending, the seizure report, panchnama, Form-95 or other documents, a certified copy can be annexed in the complaint of the authorized officer, the Special Court to accept the same as proof of seizure.

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9.The answer to the contention of the learned Additional Public Prosecutor is available in the case of "Jayant Etc., Versus The State of Madhya Pradesh in Criminal Appeal Nos.824-825 of 2020" and the relevant portion is extracted hereunder:-

> "However, our above conclusions are considering the provisions of Section 23A of the MMDR Act, as it stands today. It might be true that by permitting the violators to compound the offences under the MMDR Act or the rules made thereunder, the State may get the revenue and the same shall be on the principle of person who causes the damage shall have to compensate the damage and shall have to pay the penalty like the principle of polluters to pay in case of damage to the environment. However, in view of the large scale damages being caused to the nature and as observed and held by this Court in the case of Sanjay (supra), the policy and object of MMDR Act and Rules are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature and considering the observations made by this Court in the aforesaid decision, reproduced hereinabove, and when the violations like this are increasing and the serious damage is caused to the nature and the earth and it also affects the ground water levels etc. and it causes severe damage as observed by this Court in the case of Sanjay (supra), reproduced hereinabove, we are of the opinion that the violators cannot be permitted to go scot free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.
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> It is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the nature. As observed by this Court in the case of Sanjay (supra), excessive in stream sand and gravel mining from river beds and like resources causes the degradation of rivers. It is further observed that apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Even otherwise, sand/mines is a public property and the State is the custodian of the said public property and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the

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violators who are creating serious ecological imbalance and causing damages to the nature in any form. As the provisions of Section 23A are not under challenge and Section 23A of the MMDR Act so long as it stands, we leave the matter there and leave it to the wisdom of the legislatures and the concerned States."

10.In view of the above, the directions of Division Bench of Madurai Bench of Madras High Court has to be followed without any deviation. This Court following the case of "Sunderbhai Ambalal Desai Vs. State of Gujarat reported in MANU/SC/1110/2002 and AIR 2003 638", is inclined to return the vehicle to the petitioner. Hence, the interim custody of the vehicle viz., (Tractor and Trailer) bearing Registration No.TN-21-A-4383 already granted by this Court, by order, dated 07.12.2020 shall be continued with the same conditions.

11.This Court hereby directs the authorized Officers to file complaint before the Special Court and the Special Court to take the same on file, try it along with the Police case and to dispose both the cases. The Special Court is also directed to initiate and conclude the confiscation proceedings.

12.In the result, the order dated 07.11.2019 in Crl.MP.No.5132 of 2019 passed by the learned Principal and Session Judge, Vellore, is set-aside and the revision is, accordingly, allowed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To
1.The Inspector of Police,
Ponnai Police Station,
Vellore District.

2.The Principal Session Court
Vellore

3.The Public Prosecutor,
High Court, Madras.

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