



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.31221 of 2019 and
Crl.M.P.Nos.17024 & 17025 of 2019

P.Panneer

... Petitioner

-Vs-

1.The Inspector of Police,
Kullanchavadi Police Station,
Cuddalore District.

2.The Divisional Revenue Officer,
Cuddalore,
Cuddalore District.

... Respondents/Defacto Complainant

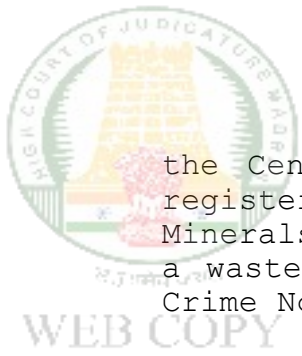
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the Crime No.278 of 2019 on the file of the 1st respondent Police and quash the same as illegal, incompetent and ultra vires.

For Petitioner	:	M/s.C.Girish Babu
For Respondents	:	M/s.C.Raghavan, Government Advocate [Crl. Side]

ORDER

This Criminal Original Petition has been filed to quash the F.I.R in Crime No.278 of 2019 on the file of the 1st respondent Police.

2.The learned counsel for the petitioner has submitted that the petitioner is the owner of the Tractor cum Tipper Lorry bearing Registration No.TN 31 AD 6799. He further submitted that the 1st respondent has registered an F.I.R in Crime No.278 of 2019 under Sections 21(1) read with 36(A) of the Mines and Minerals [Development and Regulation] Act, 1957 and seized the petitioner's vehicle. He further submitted that as per Section 22 of the Mines and Minerals [Development and Regulation] Act, 1957, cognizance can be taken only on a private complaint, that too, made in writing by a person authorized in that behalf by



the Central Government or State Government and that being so, registering a case for any offence under the the Mines and Minerals [Development and Regulation] Act, by the police will be a wasteful exercise and therefore, he prayed to quash F.I.R in Crime No.278 of 2019.

3.In support of the aforesaid contentions, the learned counsel for the petitioner, has relied upon the Division Bench decision of this Court in "Sengol and others Versus State Rep. by the Inspector of Police, R.S.Mangalam Police Station, Ramanathapuram District (CrI.O.P (MD) No.13173 of 2011, dated 05.01.2012)."

4.Per contra, the learned Government Advocate [CrI. Side] has submitted that under Section 21(6) of the Mines and Minerals (Development and Regulation) Act, 1957, an offence under Sub-section (1) of Section 21 is cognizable notwithstanding anything contained in the Code of Criminal Procedure. Therefore, it is lawful for the police to register a case and to investigate and he prayed to dismiss the petition.

5.In "Sengol and others Versus State Rep. by the Inspector of Police, R.S.Mangalam Police Station, Ramanathapuram District (CrI.O.P (MD) No.13173 of 2011, dated 05.01.2012)." (cited supra), a Division Bench of this Court in para 46 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



WEB COPY

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 authorized 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 authorizing 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 authorized 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. From the aforesaid decision, it is clear that in respect of sand theft it will be lawful for the police to register a case under Section 379 and other relevant provisions of Indian Penal Code, investigate the same as per the provisions of Code of Criminal Procedure and to lay a final report. It is also clear that 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 the case both under the provisions of Indian Penal Code 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 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. 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. 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. In this case, the 1st respondent has not registered the F.I.R either under IPC or under IPC and the provisions of the Mines and Minerals [Development and Regulation] Act. On the contrary, the 1st respondent has registered the F.I.R only under the provisions of the Mines and Minerals [Development and Regulation] Act.

7. In view of the aforesaid decision of the Division Bench of this Court in respect of offence 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 and not on a police report. Therefore, the registration of the F.I.R for any offence under the Mines and Minerals [Development and Regulation] Act, by the police will be a wasteful exercise, because, after completion of the investigation, he cannot lay a final report as the Court cannot take cognizance on the said report. Accordingly, the F.I.R in Crime No.278 of 2019 on the file of the 1st respondent has to be quashed.

8. In the result, this Criminal Original Petition is Allowed. The F.I.R in Crime No.278 of 2019 on the file of the 1st



respondent is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

WEB COPY

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police,
Kullanchavadi Police Station,
Cuddalore District.
- 2.The Divisional Revenue Officer,
Cuddalore,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Girish Babu,Advocate Sr.No. 529

AKM/21.01.2020/5P-5C /

Cr1.O.P.No.31221 of 2019