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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.32331 of 2019

and

Crl.M.P.Nos. 17794 & 18872 of 2019

Saravanan

..Petitioner

-Vs-

1. The Inspector of Police,
Mangalam Police Station,
Tirupur District,
Cr.No. 499 of 2019.

2. Sivagami

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Cr.No.499 of 2019 on the file of the Mangalam Police Station, Tirupur and quash the same.

For Petitioner	: Mr.S.Muthukrishnan
For respondents	: Mr.C.Raghavan (for R1) Government Advocate

ORDER

This Criminal Original Petition has been filed to call for the records in Cr.No.499 of 2019 on the file of the Mangalam Police Station, Tirupur and quash the same.

2. The learned counsel for the petitioner has submitted that the respondent police has registered an FIR in Crime No.499/2019 against the petitioner herein under Section 21 (1) Mines and Minerals (Development and Regulation) Act, 1957. He further submitted that in view of the decision of the Hon'ble Division Bench of this Court in Sengol and Ors Vrs the Inspector of Police reported in 2012 (2) CTC 369, the police has no power to register an FIR under Section 21 (1) Mines and Minerals (Development and Regulation) Act, 1957 and therefore, prays to quash the FIR.

3. The learned Government Advocate states that in view of the aforesaid decision of the Hon'ble Division Bench of this Court cited supra, the respondent Police is not empowered to register the FIR under Section 21 (1) Mines and Minerals (Development and Regulation) Act, 1957.



4. In the aforesaid decision, the Division Bench of this Court in para No.46 has observed 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 Criminal Procedure Code, under Section 379 and other relevant provisions of Indian Penal Code, 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 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 authorized under Section 22 of the said Act.

(iii) In any event, if the police officer, files a final report in respect of offences under Indian Penal Code as well as under Section 21 of the Mines and Minerals (Development and Regulation) Act, the Magistrate may take cognizance of the offences under Indian Penal Code 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 authorising the



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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."

5. From the aforesaid decision, it is clear that in respect of the offence under Section 21 (1) Mines and Minerals (Development and Regulation) Act, 1957, the Court can 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.

6. When the Court cannot take cognizance based on the Police report in respect of the offence under Section 21(1) of Mines and Minerals Act, 1957, registering the FIR itself is a wasteful exercise and hence this Court is inclined to allow this petition.

7. In view of the above, this Criminal original petition is allowed. The FIR in Crime No.499/2019 registered under Section 21 (1) Mines and Minerals (Development and Regulation) Act, 1957 on the file of the 1st respondent is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Mangalam Police Station,
Tirupur District,

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Sridhar , Advocate SR.No. 112

CrI.O.P.No.32331 of 2019
and

CrI.M.P.Nos. 17794 & 18872 of 2019

A.SK(06/01/2020)