



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.(MD)No.3446 of 2020

and

Crl.M.P(MD) No. 1842 and 1843 of 2020

Gandhi Selvin ... Petitioner/Accused No.2

Vs

1. The Inspector of Police
Pavoorchatram Police Station
Tirunelveli District .. 1st Respondent/Complainant

2. Jeyakumar
Special Sub Inspector of Police
Pavoorchatram Police Station
Tirunelveli District ..2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to call for the records in C.C.No.193 of 2017 on the file of the learned Judicial Magistrate, Tenkasi, Tenkasi District and quash the charge sheet against the petitioner herein.

For Petitioner : Mr.A.Thiruvadikumar

For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor



ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.193 of 2017 on the file of the learned Judicial Magistrate, Tenkasi, Tenkasi District

2. The learned counsel for the petitioner would submit that though the case has been registered for the offences under Sections Section 21(1) and 21(4) of Mines and Mineral (Development and Regulation) Act and 379 of IPC, complaint has not been given by the authorised officer and thereby the charge sheet has to be quashed. He also relied on the order passed by this Court Crl.O.P(MD) No.8584 of 2013, dated 01.03.2019, wherein it is held as follows:

"10. In Sengol Vs. State Rep. by the Inspector of Police, R.S.Managalam Police Station, Ramanathapuram District (cited supra), a Division Bench of Madurai Bench of this Court in Paragraph 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 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.?

11. In K.Subramani and Others Vs. State by Inspector of Police, Nallore Police Station, Salem District, (cited supra), the Police had registered a case under Sections 120(B). 466, 468, 471 IPC and under Sections 4(1) read with Section 21(1) of Mines and Minerals (Regulation and Development) Act, 1957. After investigation, the police filed a charge sheet. The learned Judicial Magistrate has taken cognizance of the case. The accused filed a petition under Section 482 of Cr.P.C to quash the said case. The learned Single Judge of this Court after referring to Section 22 of the said Act had quashed the proceedings. However, he gave a liberty to the



authorized person to lodge a fresh complaint under the said Act.

12. In State (NCT of Delhi) Vs. Sanjay, (cited supra) the Hon^{ble} Supreme Court in Paragraph Nos.69 to 72 has observed as follows:

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 river bed. 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 eco^{system} of the rivers and safety of bridges. It also weakens river beds, 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 ground water levels.

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 authorized 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 authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist 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 sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.



71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels 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 State, is laible to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

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

13. From the aforesaid Division Bench decision of this court and decision of the Honble Supreme Court, it is clear that the offences under the Indian Penal Code (IPC) and an offence under Section 21 of the Mines and Minerals (Regulation and Development) 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. So, in respect of sand theft, it will be lawful for the police to register a case as provided under 154 of

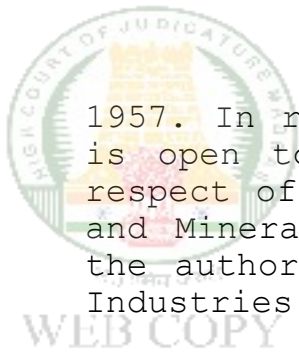


Cr.P.C under Section 379 and relevant portions of IPC and investigate the same as per the provisions of Cr.P.C to lay a final report. If an act of the accused constitutes offences under IPC as well as the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, the registration of a case both under the IPC 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 final report only in respect of the offences punishable under IPC 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 21 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 said Act, the Magistrate may take cognizance of the offences and IPC alone. In respect of the 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.

14. In the State of Tamilnadu, a notification has been issued under G.O.M.S.No.114, Industries (MMC.I) Department dated 18.09.2006 wherein the Inspectors of Police had been authorized to file a complaint under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957. Hence, it will be lawful for the Inspector of Police concerned, as an authorized person, to file a complaint under Section 22 of the said Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance".

3. The learned Additional Public Prosecutor fairly submitted that the proceedings against the petitioner in respect of offence under Section 21(1) and 21(4) of Mines and Mineral (Development and Regulation) Act cannot be continued. However, he would submit that the proceedings against the petitioner can be sustained only for the offence under Section 379 of IPC.

4. In the result, this criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed. The proceedings against the petitioner in C.C.No.193 of 2017 on the file of the learned Judicial Magistrate, Tenkasi, Tenkasi District is quashed only in respect of the offence under Section 21(1) and 21



1957. In respect of other offence, this petition is dismissed. It is open to the first respondent to file a separate complaint in respect of the offence under Section 21(1) and 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 by invoking the authorization issued by the notification under G.O.M.S No.114, Industries (MMC.I) Department dated 18.09.2006.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police
Pavoorchatram Police Station
Tirunelveli District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.THIRUVADIKUMAR, Advocate(SR-8705[F] dated 27/02/2020)

Crl.O.P.(MD)No.3446 of 2020

and

Crl.M.P(MD) No. 1842 and 1843 of 2020

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