



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.08.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P. (MD) No. 8332 of 2020

and

Crl.M.P. (MD) No. 3945 of 2020

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T.Kumar

... Petitioner/Sole Accused

Vs.

1.State represented by
The Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District,
In Crime No.287 of 2020.

2. The Sub-Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District,
In Crime No.287 of 2020.

....Respondents/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned FIR in Crime No.287 of 2020, dated 16.07.2020 on the file of the 1st respondent police and and quash the same as illegal.

For Petitioner	: Mr.R.Murugan
For Respondents	: Mr.APG.Ohm Chairma Prabhu Government Advocate

O R D E R

This petition has been filed seeking the relief to quash the FIR registered in Crime No.287 of 2020, dated 16.07.2020, for the offence punishable under Section 379 of IPC and Section 2(1) of Mines and Minerals (Development and Regulation) Act, 1957, pending on the file of the first Respondent police.

2.The grievance of the petitioner is that during the time of occurrence due to the previous enmity, the respondents 1 and 2 registered this case and recovered the Tipper Lorry and JCB bearing Registration Nos.TN 05 J 2597 and TN 67 BW 4444, respectively, which belong to the petitioner. In fact, during the time of alleged occurrence the lorry owned by the petitioner was seized by the respondent police without any sand. Therefore, the said act committed by the petitioner does not constitute the offence under Section 379 of IPC and Section 2(1) of Mines and Minerals (Development and Regulation) Act, 1957. In order to prove the same,



the petitioner has produced the copy of photographs which was taken in the Police Station, in which both the lorry and JCB are stationed.

3.Mr.APG.Ohm Chairma Prabhu, learned Government Advocate appearing on behalf of the respondents, on instructions, would submit that only after identifying the commission of offence committed by the petitioner, the respondent police has registered the above referred case. Further, the petitioner is having two other cases of similar nature. According to him, the petitioner has committed this type of offence repeatedly by breaching the lawful means.

4.Upon considering the arguments advanced by either side, it is not in dispute that in the petition mentioned FIR, a case has been registered against the petitioner, under Section 379 of IPC and Section 2(1) of Mines and Minerals (Development and Regulation) Act, 1957. The said case has been registered suo-motu by the second respondent police, after seeing the alleged offence as stated in the First Information Report. Only in view of the same, the first respondent police had recovered one lorry and one JCB and as of now, the investigation is still pending.

5.In this connection, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **SAU. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others in Crl. Appeal No.255 of 2019**, wherein, our Hon'ble Apex Court has held as follows :

"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."

So applying the principle set out by our Hon'ble Apex Court, in this case, the averments set out in the First Information Report clearly discloses the cognizable offence and during the time of commissioning of the offence the petitioner has committed the offence of sand theft. The averments made in the First Information Report clearly discloses that a prima facie case has been made out against the petitioner and therefore, this is not a fit case for quashing the First Information Report. Therefore, I am of the considered opinion that this petition is liable to be dismissed. The Trial Court is directed to dispose of the above said case, without being influenced by any of the observations made by this Court.



6. In view of the above discussions, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1. The District Munsif Court,
Aruppukkottai.
2. The Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District,
In Crime No.287 of 2020.
3. The Sub-Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.[MD]No. 8332 of 2020
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