



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.08.2020**

CORAM:

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

CrI.O.P.(MD)No.8864 of 2020

and

CrI.M.P.(MD) No.4164 of 2020

WEB COPY

Prabakaran

... Petitioner/Sole Accused

Vs.

1.State Rep. by

The Inspector of Police,
Peraiyur Police Station,
Peraiyur,
Ramanathapuram District.
(Crime No. 117 of 2020)

...R-1/ Complainant

2.The Village Administrative Officer,
Pakkuvetti Group,
Kamuthi Taluk,
Ramanathapuram District.

...R-2/Defacto complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records of the First Information Report in Crime No.117 of 2020 dated 24.06.2020 on the file of the first respondent police and to quash the same as illegal.

For Petitioners	: Mr.K.R.Laxman
For Respondents	: Mr.APG.Ohm Chairma Prabhu Government Advocate

O R D E R

This petition has been filed to call for the records of the First Information Report in Crime No.117 of 2020 dated 24.06.2020, on the file of the first respondent police and to quash the same as illegal.

2.The learned counsel appearing for the petitioner would submit that the first respondent police with malafide intention obtained a report from the second respondent and registered a false case as against this petitioner. He would further submit that in respect of the occurrence after registration of the case, the first respondent has not recovered the vehicle in which the stolen sand was transported. The complaint given by the second respondent appears that, he has not mentioned the registration number of the lorry, which itself proved the fact that the petitioner has not committed any offence. Further, the averments set out in the First Information Report did not constitute an offence under Section 21 (1) Mines and Minerals (Development and Regulation) Act, 1957.



Accordingly, he prays to allow the petition and quash the First Information Report registered against him.

3.Mr.A.P.G.Ohm Chairma Prabhu, learned Government Advocate appearing on behalf of the respondents, on instructions, would submit that only on 24.06.2020, the First Information Report in connection with Crime No.117 of 2020 has been recorded, further the investigation in this case is in threshold stage, hence, we cannot expect the complete details of occurrence in the complaint itself, including the registration number of the vehicle which was used for commission of the offence.

4.Upon considering the arguments advanced by either side, the averments found in the First Information Report registered in Crime No.117 of 2020, required to be quashed, is that on 23.06.2020, at about 3.00 p.m the petitioner herein drove the Tipper Lorry along with five units of river sand. When the second respondent was attempted to trace the vehicle, the petitioner herein put the river sand near to his residence from the lorry and ran away from the place of occurrence along with the lorry which was used to transport the sand. So it is made clear that the said averments found in the First Information Report has constituted a cognizable offence. In the said circumstances, only during the time of investigation, the Investigation Officer has to identify, whether the sand put by the petitioner is a stolen property and also about the registration number of the vehicle which has been used for committing the offence. Only after completing the investigation, the queries raised by the petitioner will be answered. In otherwise, "Inherent powers of High Court under Section 482 Cr.P.C are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court. These inherent powers can be exercised in the following category of cases : (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Extraordinary power under Section 482 of Cr.P.C should be exercised sparingly and with great care and caution."

5.In the judgment of our Hon'ble Apex Court in **U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi and another**, reported in **2009 (2) SCC 147**, wherein, our Hon'ble Apex Court has held as follows :

"When exercising jurisdiction under Section 482 of the Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. To put it clear, it is the function of the trial Judge to



do so. The Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. If the allegations set out in the complaint do not constitute offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Criminal Procedure Code. However, it is not necessary that there should be meticulous analysis of the case before the Trial to find out whether the case would end in conviction or acquittal."

6. Further, in the judgment of our Hon'ble Apex Court in **State of Orissa and another Vs. Saroj Kumar Sahoo**, reported in **2005 (13) SCC 540**, has held as follows :

"High Court should not ordinarily embark upon an enquiry as to the reliability of evidence to sustain the allegations, which is the function of the Trial Judge."

So applying the principle set out by our Hon'ble Apex Court, in this case, since the application is filed under Section 482 of Cr.P.C., it is not the duty of this Court to make an enquiry about the reliability of the evidence which concluded only during the time of investigation. Here is a case, the investigation is at the threshold stage.

7. Our Hon'ble Apex Court is very particular that during the time of investigation or during incomplete investigation, the First Information Report cannot be quashed for the above said reason particularly, in respect to the factual aspects. Therefore, considering the facts and circumstances of the case, I am of the considered opinion that the prayer sought for by the petitioner is devoid of merits. However, the petitioner is at liberty to file a quash application, after filing of the charge-sheet.

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

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

RM

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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 Inspector of Police,
Peraiyur Police Station,
Peraiyur,
Ramanathapuram District.
- 2.The Village Administrative Officer,
Pakkuvetti Group,
Kamuthi Taluk,
Ramanathapuram District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AP (10/09/2020) 4P 4C