



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated : 11.01.2021

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THE HONOURABLE MRS .JUSTICE R.HEMALATHA

CRL OP(MD). No.348 of 2021

and

Crl.M.P(MD).No.150 of 2021

Pethuraj

... Petitioner/Accused No.1

Vs

1.The State rep., by
The Inspector of Police,
Mayiladumparai Police Station,
Theni District.

2.Thanga Marimuthu ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crime No.436 of 2020 on the file of the first respondent police and quash the same against the petitioner as illegal and abuse of process of law.

For Petitioner : Mr.S.Ramesh Babu

For R-1 : Mr.S.Chandrasekar

Additional Public Prosecutor

ORDER

The present petition is filed by the petitioner under Section 482 of Code of Criminal Procedure to quash the First Information Report in Crime No.436 of 2020 on the file of the Inspector of Police, Mayiladumparai Police Station.

2.The main contention of the petitioner is that the first respondent based on a complaint given by the Village Administrative Officer, registered the above said case for the alleged offences punishable under Section 379 Indian Penal Code r/w 21(4) of Mines and Minerals (Development & Regulation) Act, 1957 and that he has not committed any such offence. It is also his contention that the Village Administrative Officer is not an authorised person to proceed against the present petitioner under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short MMDR Act).



3.Mr.S.Chandrasekar, learned Additional Public Prosecutor, who accepts notice on behalf of the first respondent, would submit that the petitioner is a habitual offender and the following six cases are pending against him:

- 1.Crime No.9 of 2020 under Section 379 IPC r/w 21(4) MMDR Act;
2.Crime No.55 of 2019 under Section 36(A) MMDR Act;
3.Crime No.7 of 2019 under Section 36(A) MMDR Act;
4.Crime No.390 of 2018 under Section 36(A) MMDR Act;
5.Crime No.351 of 2018 under Section 36(A) MMDR Act;
and 6.Crime No.282 of 2018 under Section 36(A) MMDR Act.

4.In the decision in **Jayant Vs., State of Madhya Pradesh** reported in **2020 SCC Online SC 989** it has been held thus:

"After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-a-vis the Code of Criminal Procedure and the Penal Code and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned

In-charge/SHO of the police station to register/lodge



the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded.

However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Section 379 and 414 IPC and the same shall be proceeded with further."

5. In the decision reported in **(2014) 9 SCC 772** in the case of **State (NCT of Delhi) Vs., Sanjay**, the Hon'ble Supreme Court held that when no complaint has been lodged by an officer authorised under MMDR Act, the Police is authorised under the said Act to register FIR for theft of Mines and Minerals, under Section 378 r/w 379 of Indian Penal Code, as natural resources belong to the public and the State being its trustee. It is further held that the Police have power to investigate and file charge sheet irrespective of the procedures contemplated under MMDR Act.

6. In the facts and circumstances of the present case, I do not find any reason to quash the FIR in Crime No.436 of 2020 based on the contentions raised by the present petitioner. The first respondent is directed to expedite the investigation in Crime No.436 of 2020 and file a final report within a period of six months from the date of receipt of a copy of this order.



7. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2021

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 Inspector of Police,
Mayiladumparai Police Station,
Theni District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER IN
CRL OP(MD). No.348 of 2021

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TR(08.02.2021) 4P 3C