



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.07.2021

DELIVERED ON : 09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

CrI.O.P. (MD)No.9141 of 2021

CRL.M.P. (MD) .No.4669 of 2021

V.Kasinathan

... Petitioner

Vs.

1. The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.
Crime No.264 of 2020.

... Respondent / Complainant

2.V.Sethuraman,
Zonal Deputy Tashildar,
Thiruvadanai Taluk Office,
Ramanathapuram District.

... 2nd Respondent / Defacto
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the F.I.R in Crime No.264 of 2020 pending on the file of the first respondent Police and quash the same as illegal.

For Petitioner : Mr.V.P.Panneer Selvam

For Respondents : Mr.R.M.Anbunithi

Additional Public Prosecutor

O R D E R

This petition has been filed seeking quashment of the First Information Report in Crime No.264 of 2020 dated 21.10.2020 on the file of the first respondent Police.

2. The case of the prosecution is that on 21.10.2020 at about 2.00 P.M., it was informed to the second respondent that illegal sand mining activities were going on in Velu Udaiyar land. On getting information, the Tahsildar, Thiruvadanai Taluk Office, Ramanathapuram District went to the place of occurrence along with the Village Administrative Officer and found six JCB vehicles. All the JCB vehicles were seized and the drivers were also arrested. On the basis of the complaint given by the Tahsildar, a case in Crime No.264 of 2020 for the offence punishable under Section 21(1) of Mines and Minerals Act has been registered against this petitioner



and others.

3. Seeking quashment of the First Information Report, this petition has been filed mainly on the ground that the petitioner has taken sand in S.No.10/4, which belongs to the petitioner's family. Only for the purpose of developing the land, they dug a pond and transported the waste soil to lay the pathway in his land and filled the low level areas in and around the godown. The work was started on 20.10.2020. At that time, the Sub-Inspector of Police, Thiruppalakudi came to the occurrence and seized the vehicles. According to the petitioner, absolutely there was no illegal sand mining activity and only for the purpose of developing the land, they have dug a pond and transported the waste soil.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the respondents.

5. Straight away, this Court will go to the order passed by this Court in various proceedings in respect of the offence that has been registered against the petitioner. This petitioner has filed W.P.(MD).No.15063 of 2020 for releasing the vehicle bearing Registration No.TN-63-S-7498 which was seized in pursuant to the above said case, in which, this Court has passed a conditional order. Against this order, the petitioner has preferred an appeal in W.A.(MD).Nos.1009 to 1015 of 2020. The Hon'ble Division Bench of this Court, after considering the factual position, has appointed an Advocate Commissioner to visit the place of occurrence and file a report with regard to the alleged illegal sand mining activity. Inspection was undertaken by the Commissioner. In the report, it is stated that sand in Survey No.10-1B was taken to field in Survey No.36/1. Further, final order has been passed by this Court on 29.01.2021, wherein, it has been observed that on the basis of the commissioner report, it was found that surface soil was taken from one boundary to the other boundary for the purpose of constructing a house. So, all the writ appeals were allowed and the vehicles were released without pre-condition. Hence, there was no illegal sand mining as defined under Section 21(1) of the Tamil Nadu Mines and Minerals Act, 1957.

6. Next ground is that the offence under Section 21(1) of the above said Act is a non-cognizable offence for which the police has no right to file the First Information Report. Only the Revenue Authority is the competent person to file a private complaint. For that purpose, the petitioner would rely upon the judgment of this Court in the case of **SENGOL AND OTHERS vs. THE INSPECTOR OF POLICE reported in 2012(2) CTC 369**, wherein it has been held that the Police has no power to register the case for the offence punishable under Section 21(1) of the above said Act. Following this judgment, this Court in number of cases has quashed the First Information Report which was registered for such offence.



7. From the records, it appears that the case has been registered on the basis of the complaint given by the Zonal Deputy Tahsildar which is not permissible under law.

8. Now, coming back to the alleged illegality, the petitioner would rely upon the judgment of this Court in the case of **BABU vs. Collector, Theni and others reported in (2008) 1 MLJ 642**. In the above said judgment, it has been observed that no permission or license is required for transporting minor mineral for bonafide domestic or agricultural purpose and for own use, as per the Rule 17 of the Miner Mineral Concession Rule. Rule 17 does not prohibit a Registered holder to quarry free of charge of minor mineral on small scale or his own purpose for specific bonafide domestic or agricultural purposes which is not made as offence under Act. Hence, reading of this judgment makes the position very clear. As found by the Advocate Commissioner in the writ appeal, the petitioner has taken the sand for agricultural and domestic purposes from his own land.

9. Hence, this Court is of the considered view that no offence is made out even as per the allegations made in the First Information Report. Therefore, continuance of the proceedings against the petitioner will amount to abuse of process of law. So, the First Information Report is liable to be quashed and accordingly, it is quashed.

10. With these, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

To

1. The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.
Crime No.264 of 2020.

2.V.Sethuraman,
Zonal Deputy Tashildar,
Thiruvadanai Taluk Office,
Ramanathapuram District.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-28892[F] dated
13/09/2021)

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NSN(CO)
SB(17.09.2021) 4P 5C