



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl OP(MD) Nos. 13871, 14240, 14606, 14611 & 14614 of 2021

and

Crl MP(MD) Nos. 7458, 7638 & 7647 of 2021

in Crl OP(MD) No. 14606 of 2021 :

M.S.Raja ... Petitioner/Informant (Victim)

vs.

1. The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Crime No. 332 of 2021) ... Respondent/Complainant

2. T. Harish Revington Duraisingh

3. Jeevanantham

4. Ramakrishnan

5. Ponsekar Samuel Durairaj ... Respondents / Accused
(Rank Not Known)

in Crl OP(MD) No. 14611 of 2021 :

M.S.Raja ... Petitioner/Informant (Victim)

v.

1. The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Crime No. 332 of 2021) ... Respondent/Complainant

2. Thangadurai

3. Ramesh

4. Palanisamy

5. Palani Swaminathan ... Respondents



in Crl OP(MD)No.14614 of 2021 :

M.S.Raja

... Petitioner / Informant (Victim)

v.

1.The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Crime No.332 of 2021)

...Respondent/Complainant

2.B.Kumar

3.Sankarabalakrishnan

4.Subburaj

5.Sivasubramaniyan

...Respondents / Accused
(Rank Not Known)

Common Prayer for Crl OP(MD)Nos.14606, 14611 & 14614 of 2021 : These three Criminal Original Petitions filed under Section 482 of Cr.PC, to set aside the order passed by the learned Principal Sessions Judge, Thoothukudi in Unnumbered Cr.M.P. in Seial No.6284/2021 (Crl.Regr.(A)9) in Cr.M.P.No.3811 of 2021, Cr.M.P. in Seial No.6286/2021 (Crl.Regr.(A)9) in Cr.M.P.No.3804 of 2021 and Cr.M.P. in Seial No.6285/2021 (Crl.Regr.(A)9) in Cr.M.P.No.3806 of 2021, respectively, pending on his file vide order dt.22.9.2021 and consequently direct the aforesaid learned Judge to entertain the petitioner as a victim of the crime referred to in Crime No.332 of 2021 registered at SIPCOT Police Station, Thoothukudi District by allowing him to maintain his intervening applications in the bail/anticipatory bail petitions being filed by the accused persons and other petitions connected with the said crime.

in Crl OP(MD)No.13871 of 2021 :

M.S.Raja

... Petitioner/Victim

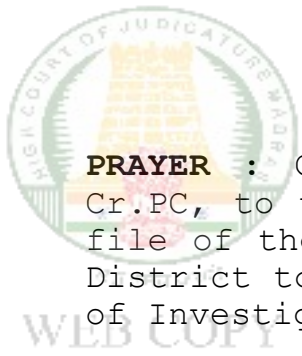
v.

1.The Superintendent of Police,
Thoothukudi District, Thoothukudi.

2.The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Crime No.332 of 2021)

3.The Superintendent of Police,
Central Bureau of Investigation,
Madurai District.

...Respondents/Respondents



PRAYER : Criminal Original Petition filed under Section 482 of Cr.PC, to transfer the investigation in Crime No.332 of 2021 on the file of the Inspector of Police, SIPCOT Police Station, Thoothukudi District to the file of the Superintendent of Police, Central Bureau of Investigation, Madurai District for proceeding further.

in Cr1 OP(MD)No.14240 of 2021 :

M/s.V.V.Titanium Pigments Pvt.Ltd.,
Rep.by its Assistant General Manager,
M.Palanisamy ... Petitioner / Accused

v.

1.The State, Rep.by the Inspector of Police,
Sipcot Police Station, Thoothukudi. ... Respondent
(Crime No.332 of 2021)

2.A.Rajesh Kanna
Village Administrative Officer,
Meelavittan Part-I Village,
Thoothukudi. ... Respondent/ De-facto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.PC, to call for the records and quash the impugned FIR in Crime No.332 of 2021 on the file of the first respondent against the petitioner.

in Cr1 OP(MD)No.14606 of 2021 for Petitioner For Respondent No.1	Mr.R.Anand Mr.T.Senthilkumar, Additional Public Prosecutor
For Respondents 2 & 4	Mr.Lakshminarayanan for M/s.Kingsly Solomon
in Cr1 OP(MD)Nos.14611 & 14614 of 2021, for Petitioner	Mr.R.Anand
For R1	Mr.T.Senthilkumar, Additional Public Prosecutor
For R2 to R5	Mr.M.Maharaja for M.C.Gan Law Firm
in Cr1 OP(MD)No.13871 of 2021 for Petitioner For R1 and R2	Mr.R.Anand
For R3	Mr.T.Senthilkumar, Additional Public Prosecutor Ms.L.Victoria Gowri, Assistant Solicitor General of India - I



in Crl OP(MD)No.14240 of 2021
for Petitioner
For R1

Mr.M.Maharaja
for MC.Gan Law Firm
Mr.T.Senthilkumar,
Additional Public Prosecutor

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COMMON ORDER

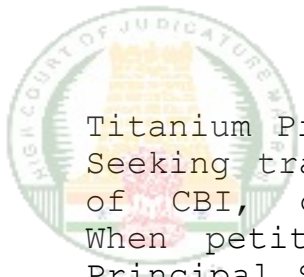
All these original petitions arise out of Crime No.332 of 2021 registered on the file of the Inspector of Police, SIPCOT Police Station, Thoothukudi District. The said FIR was registered on 20.08.2021 for the offences under Sections 448, 379 and 420 of IPC r/w.Section 21 (4) of Mines and Minerals (Development and Regulation) Act, 1957 on the basis of information given by the Village Administrative Officer, Meelavittan Part I, Thoothukudi. The informant received information that a portion of the stockpile of ilmenite mineral kept in the sealed godown belonging to V.V Mineral group was being illegally transported to V.V Titanium Pigments Private Limited. When he reached its premises, he found that the mineral had already been unloaded from three lorries. The lorries, the empty gunny bags and 39 tonnes of the mineral sand were seized. In the year 2017, the Government of Tamil Nadu had appointed special teams to estimate the actual quantum of beach sand minerals stacked at various places in Thoothukudi District pursuant to the direction of the Hon'ble First Bench of the Madras High Court made by order dated 11.01.2017 in Suo Motu PIL WP No.1592 of 2015 and W.A No.1168 & 1169 of 2015. The final stock position as far as V.V Minerals, Mullakkadu and Agaram Village was as follows :

Stock Type	Survey No	Volume cu.mts	Bulk Density	Net Quantum (in Mts)
Garnet	21A/1A, 1B, 1C	25641.99	2.432	62361.34
Ilmenite		26489.62	2.739	72565.08
Zircon		902.31	2.921	2635.65
Rufile		306.42	2.641	809.25
Harbour Construction Road				
Garnet	262/2	10496.69	2.388	25066.10
Agaram (Srivaikuntam Taluk)				
Ilmenite	152/1A, 1B	269.5	2.27	686.666
Total Quantum				164113.028

It is not in dispute that the entire stock was kept in a sealed godown and till date, permission has not been granted for removing the mineral stored therein.

2.The case of the prosecution as set out in the impugned FIR is that from this godown, there has been an illegal removal and transport of 39 tonnes of ilmenite mineral. To quash the FIR, V.V

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

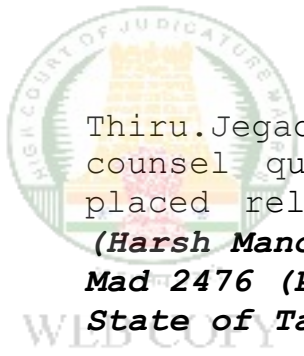


Titanium Pigments Private Limited filed CrI OP(MD)No.14240 of 2021. Seeking transfer of investigation and its entrustment in the hands of CBI, one M.S.Raja has filed CrI OP(MD)No.13871 of 2021. When petitions seeking anticipatory bail were filed before the Principal Sessions Judge, Thoothukudi in connection with this case, M.S.Raja filed petitions to intervene. Those petitions were dismissed by the learned Sessions Judge. Challenging the dismissal orders, CrI OP(MD)Nos.14606 & 14611 and 14614 of 2021 have been filed. Since all the original petitions are inter connected, they were heard together and are disposed of by this common order.

3.The issue of *locus standi* of M.S.Raja can be taken up first. In this case, the police arrested the persons who had transported the mineral. When they filed bail petitions, M.S.Raja filed Cr.MP Nos.3672, 3870 & 3871 of 2021 for intervening himself. Those petitions were dismissed by the Sessions Court by order dated 03.09.2021 on the ground that M.S.Raja did not have *locus standi*. The said order was not put to challenge by M.S.Raja. Therefore, when he subsequently filed petitions to intervene in the anticipatory bail petitions, the learned Sessions Judge dismissed them too. Of course, the reference to Section 362 of Cr.Pc does not appear to be appropriate. But then, the learned Sessions Judge could not have allowed the subsequent petitions for intervention when he had dismissed the earlier intervention petitions filed by M.S.Raja. Judges unlike litigants and lawyers are obliged to be logically consistent.

4.The learned counsel appearing for the proposed intervenor submitted that it was he who fed the information to the Village Administrative Officer, Meelavittan and hence, he has every right to insist that he should be heard in these proceedings. In any event, the very concept of *locus standi* is foreign to criminal law. Anyone can set the criminal law in motion. It is not necessary that he should personally be aggrieved. In matters of public interest an expansive view will have to be taken. He relied on the decisions reported in **(2016) 6 SCC 699 (Amanullah vs. State of Bihar)**, **Sathyavani Ponrani v. Samuel Raj (2010 (4) CTC 833)**, **Rekha Murarka v. The State of West Bengal (2020) 2 SCC 474** and **A.R.Antulay vs. Ramdas Srinivas Nayak and ors (1984) 2 SCC 500**). He reminded the court that beach sand minerals are a national treasure and that they cannot be exploited by private interests and that is why, the Hon'ble First Bench issued a series of directions in this regard.

5.Per contra, the learned Additional Public Prosecutor submitted that the investigation is proceeding on the right lines and that the intervention of M.S.Raja is unnecessary. He relied on the decision reported in **2021 SAR (Cri) 309 (Sanjai Tiwari vs. State of Uttar Pradesh & Anr)**. The learned counsel appearing for the accused added that there is a serious dispute going on between Thiru.Vaigundarajan and his brother Thiru.Jegadeesan and that



Thiru.Jegadeesan is waging a proxy war through M.S.Raja. The learned counsel questioned the bonafides of the proposed intervenor. He placed reliance on the decisions reported in **(2017) 13 SCC 420 (Harsh Mandar vs. Amit Anilchandra Shah and ors)** and **2019 SCC Online Mad 2476 (Prisoners Right Forum rep.by its Director P.Pugalandhi vs. State of Tamil Nadu)**.

6.Crime No.332 of 2021 was registered on 20.08.2021. Four days later, M.S.Raja sent a representation to various authorities demanding the arrest of Thiru.Vaigundarajan and his sons. In this representation, M.S.Raja did not claim that he was the one who supplied information to the Village Administrative Officer, Meelavittan. In his intervention petition filed before the Sessions Court, Thoothukudi, he averred that he came to know that Crime No.332 of 2021 has been registered against V.V.Titanium Pigments Private Limited for having committed the offence of breaking open and trespassing into the godown sealed by the Government and for stealing the assessed mineral ilmenite. Having taken such a stand before the Sessions Court, M.S.Raja cannot now plead before me that he was the actual informant. It is commonly remarked that one cannot ride two horses at the same time. But here the horses are not only two but they are also going in opposite directions. At more than one place, M.S.Raja had stated that he came to know about this criminal case later and before me, he claims to be 'Suthradari'. A person taking such a mutually inconsistent stand can neither be permitted to intervene nor be conferred with any locus standi. I fail to understand as to how he could have described himself as a victim in the cause title. Though there is substantial public interest involved in this case, there is nothing to show that the investigation has been derailed. No case has been made out for transfer of investigation. I therefore dismiss all the petitions filed by Thiru.M.S.Raja.

7.Even though this aspect of the matter was brought to my notice at the very inception by Thiru.V.Lakshminarayanan, the learned counsel appearing for the accused, I still heard Shri.R.Anand, the learned counsel for M.S.Raja at length. The Vedic injunction "let noble thoughts come to us from all directions" holds good in this context also. In an adjudicatory process, the Judge should welcome light from any quarter. If dirty linen is washed in public by the two warring brothers, it is the prosecution that stands to benefit. Even without formally permitting intervention, it is open to the court to hear any person.

8.The impugned FIR is sought to be quashed primarily on the ground that its registration was not preceded by any preliminary enquiry. He relied on the decision of the Hon'ble Supreme Court reported in **(2014) 2 SCC 1 (Lalita Kumari vs. Govt. of U.P. and Ors.)** in this regard. According to the prosecution, the sealed godown contained 72565.08 Mts of ilmenite and unless a physical

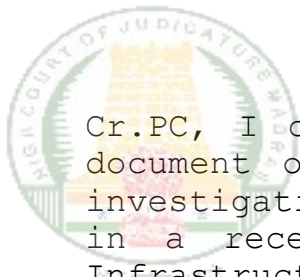


stock verification revealed shortfall, there cannot be an allegation that there was unlawful removal of the mineral therefrom. In this case, the prosecution had not satisfied itself in the first instance that there was shortfall. If a preliminary enquiry had been conducted as contemplated in Lalita Kumari's case, the FIR would not have been registered at all. The learned counsel drew my attention to the order dated 27.02.2020 made in WP(MD)Nos.24396 and 22615 of 2019. In the writ petition filed by V.V.Titanium Pigments Private Limited, a learned Judge of this Court had held that MMDR Act cannot have any application to the import of ilmenite mined outside the territory of India. It was also noted that ilmenite is freely importable and the District Collector, Thoothukudi District has no authority to interfere with its import nor exercise the powers of central government. According to the learned counsel, the mineral that has been seized pursuant to the registration of the impugned FIR was imported and cleared by Customs authority. He vehemently contended that the entire prosecution has been engineered by Thiru.Jegadeesan, the estranged brother of Thiru.Vaigundarajan. Since the impugned prosecution is manifestly attended by malafides, it is liable to be quashed.

9.I am not persuaded by the aforesaid submissions. Whether the failure to hold preliminary enquiry as contemplated in Lalita Kumari would vitiate the registration of FIR has been answered in the decision reported in **(2019) 19 SCC 87 (State of Telengana v. Managipet)**. The Apex Court pointed out that while a preliminary enquiry may be conducted in cases pertaining to matrimonial disputes, commercial offences, medical negligence, corruption cases etc., the judgment in Lalita Kumari does not state that proceedings cannot be initiated against an accused without conducting a preliminary enquiry. In **Mukesh Singh v. State (NCT of Delhi) (2020) 10 SCC 120**, it was noted that even according to Lalita Kumari, "the word 'shall' used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of expression "information" without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing."

10.The information lodged by the Village Administrative Officer contained an allegation that there was theft of beach mineral from a sealed godown. Theft is a cognizable offence. Therefore, the first respondent had no option but to register the impugned FIR.

11.Consideration of the contentions advanced by the learned counsel for the accused would necessarily involve undertaking a factual analysis. In exercise of jurisdiction under Section 482 of



Cr.PC, I cannot do so. The accused have not produced any public document of sterling and unimpeachable quality. That apart, the investigation is at a very early stage. The Hon'ble Supreme Court in a recent decision reported in AIR 2021 SC 1918 (Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.) has laid down a set of parameters to govern the exercise of jurisdiction under Section 482 of Cr.Pc. It has been laid down that investigation ought not to be scuttled at the initial stage. I therefore dismiss CrI OP(MD)No.14240 of 2021. All the defences of the accused are left open. I have not gone into the merits of the matter.

12.In the result, all the Original Petitions are dismissed. Connected Miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

To

1.The Superintendent of Police,
Thoothukudi District, Thoothukudi.

2.The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.

3.The Superintendent of Police,
Central Bureau of Investigation,
Madurai District.

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

+3 CC to M/s.MC GAN LAW FIRM, Advocate (SR-37332 to 37334[F] dated 03/12/2021)

CrI OP(MD)Nos.13871, 14240, 14606,
14611 & 14614 of 2021
01.12.2021

MA (CO)

TR(10.12.2021) 8P 8C