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CRL.O.P.(MD)NO.19414 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P.(MD)No.19414 of 2021 and

CRL.M.P.(MD)No.10843 of 2021

K.Palpandian

... Petitioner / Accused No.1

Vs.

1. State rep. By,
The Inspector of Police,
Koodalpudur police station(L&O),
Madurai District.
(Crime No.331 of 2021) ... Respondent / Complainant
2. Andavar,
Sub Inspector of Police,
Koodalpudur police station(Traffic),
Madurai District. ... Respondent No.2 /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records connected to the First Information Report in Crime No.331 of 2021 pending on the file of the first respondent police station and quash the same as illegal as against the petitioner/ accused No.1.

For Petitioner : Mr.M.Vivek Kumar
For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

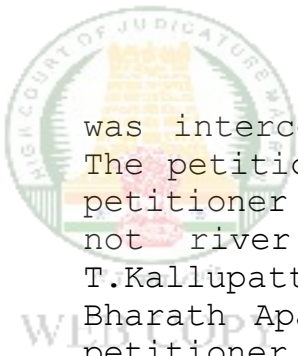
O R D E R

Heard the learned counsel on either side.

2. This criminal original petition has been filed to quash the First Information Report in Crime No.331 of 2021 registered on the file of Koodal Pudur police station (L&O), for the offences under Section 379 of I.P.C. and Section 21(1) of Mines and Minerals (Development and Regulation) Act 1957.

3. The case was registered based on the information given by the second respondent. The case of the prosecution is that on 07.06.2021, the petition mentioned vehicle bearing registration No.TN 05-AC-0150

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



was intercepted and found to contain illegally removed river sand. The petitioner is the owner of the vehicle. The specific case of the petitioner is that what was transported on the occurrence date was not river sand, but M Sand obtained from Sivasakthi M-Sand, T.Kallupatti, Madurai - 625 702. The material was meant for Annai Bharath Apartment, Thiruppalai, for construction purpose. Since the petitioner contested the very foundation of the prosecution case, it became necessary to test the nature of the material. The petitioner filed Cr.M.P. No.1650 of 2021 before the Special Court to Deal with the Cases of Offences in Contravention of the Provisions of the Mines and Minerals(D&R) Act, Madurai, for sending the sample for forensic analysis. The said Cr.M.P. was allowed on 23.09.2021 in the following terms:-

"9. In the result, this petition is allowed with the direction that the Deputy Director of the Geology and Mining Department, shall depute a staff who shall come over to this Court and take a sample of the seized mineral preserved by this Court in the presence of the Headministerial Officer and the counsel of the accused, seal the same in their presence, analyse the said mineral in their Lab as required and submit a report before this Court on the question whether the seized mineral is M-Sand or river sand. All the expenses accruing thereof including any fee fixed by the Department for the soil test shall be born by the petitioner-1st accused. The report shall be sent to this Court directly in a sealed cover."

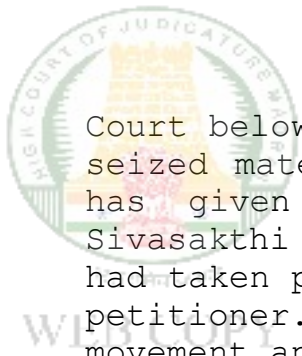
4. Pursuant thereto, the Deputy Director of Geology and Mining, Madurai, conducted test and gave report that the sample can be classified as M Sand.

5. The learned Additional Public Prosecutor produced photographs showing that a sticker was pasted on the front of windshield of the vehicle as if the vehicle was on urgent Government duty for Government Rajaji Hospital. According to the learned Additional Public Prosecutor, no case for quashing has been made out.

6. I carefully considered the rival contentions.

7. If as claimed by the prosecution, the vehicle carried a sticker that it was on Government duty, then certainly that would have been referred to in the First Information Report itself. No such allegation has been made by the Traffic Sub Inspector of Police. Therefore, there is considerable merit in the contention of the petitioner's counsel that this sticker must have been pasted subsequently.

8. The specific stand of the prosecution is that river sand was being transported. To this effect, the report was filed before the



Court below. But the forensic report categorically indicates that the seized material was only M Sand and not river sand. The petitioner has given a categorical statement that it was purchased from Sivasakthi M Sand under due documentation on 28.04.2021. The seizure had taken place on 07.06.2021. This time gap is duly explained by the petitioner. During the relevant time, there was not much of vehicular movement and since the vehicle in question had suffered a break down, sand was unloaded in his home. After the lock down restrictions were eased, it was reloaded and was taken to Annai Bharath Apartment, when the interception took place and seizure was effected.

9. I am more than satisfied that the very foundation of the prosecution case has to go. A simple enquiry with the builder who had engaged the petitioner and the person who supplied the material would have been more than enough to unearth the truth. The first respondent has not even moved his little finger in this regard.

10. I am more than satisfied that this case was registered for extraneous reasons. The impugned First Information Report is quashed.

11. The petitioner through his counsel gives an undertaking that he would treat the matter as closed and he would not take any action against the respondents herein. This undertaking is recorded.

12. The jurisdictional Court is directed to return the petition mentioned vehicle as well as the seized material to the petitioner forthwith and without any delay.

13. This criminal original petition is allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

21/12/2021

Sub Assistant Registrar(CS)

PMU

Note: 1. 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,
Koodalpudur police station(L&O),
Madurai District.

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

1CC TO MR. M.VIVEK KUMAR, ADVOCATE SR:39609

MGJ
21/12/2021
4P/4C

Cr1.O.P.(MD)No.19414 of 2021
17.12.2021