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CRL.O.P.No.15682 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.15682 of 2019

and

Crl.MP.No.7788 of 2019

1.Senthil Kumar

2.Bojarajan

... Petitioners/Accused 2 and 3

Versus

1.The State by

The Inspector of Police,

Amaravathi Nagar Police Station,

Tirupur District.

Crime No.126/2012

... 1st Respondent / complainant

2.P.Arumugam

... 2nd respondent/ defacto complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.23 of 2017, on the file of the Judicial Magistrate No.1, Udumalpet and quash the same.

For Petitioners : Mr. S.N.Arunkumar

For Respondent-1: Mr.A.Damodaran



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Additional Public Prosecutor

ORDER

The petitioners have filed this petition to call for the records in C.C.No.23 of 2017, on the file of the Judicial Magistrate No.1, Udumalpet and quash the same.

2. The petitioners are the accused 2 and 3 in C.C.No.23 of 2017, on the file of the Judicial Magistrate No.1, Udumalpet.

3. The case of the prosecution is that LW1 to LW.4, who are Village Administrative Officers and Village Assistants of Ellaiyamuthur Village, Udumalpet went to Amaravati river bed at Kumbe Koundan Durai Dam for inspection; based on an information received on 17.08.2012 at about 10.40 a.m., they saw 10 loads of sand heaped on the left side of the bank of the river Amaravathi; when the dam watchman was enquired, he told that during that night the sand was taken from the river bed by using JCB, a vehicle bearing registration number TN 41 V 5922 New Holland 5500 Tracker was parked there; the driver of the tractor by name Thirunavukkarasu stated that



he had been there to take away the tractor belongs to one Anandan. Since the sands were taken without permit, a case has been registered in Crime No.126 of 2012 for the offences under Sections 379, r/w 511 of IPC and 21(A) of the Mines and Minerals Development Regulation Act 1957, 36(a) of the Tamil Nadu Mines and Minerals Act-1959.

4. The learned counsel for the petitioners submitted that so far as these petitioners who have been arrayed as second and third accused are concerned, there is no materials available against them; in the list of witnesses in the charge sheet, it is seen that no private witness is examined, when LW.1 to LW.4 are two Village Administrative Officers and two Village Assistants, LW.5 and 6 are the persons who stood as witnesses for preparation of the Rough Sketch and Observation Mahazar; LW.7 to L.W.9 are the police officers who registered the statements of the witnesses and filed the charge sheet; in none of the statements of witnesses L.W.1 to L.W.6, the overtact of the accused 2 and 3 have been stated; without any materials; the petitioners should not be subjected to the ordeal of trial and hence the case against the petitioners should be quashed.



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5. Per contra, the learned Additional Public Prosecutor for the first respondent police submitted that only with the active involvement of the petitioners, the river sand could be lifted from the river to the bank and it was stored for the purpose of taking through the tractor; since there are enough materials available on record, the petitioners should be subjected to put on trial.

6. Heard the submissions made by learned counsels on either side and perused the materials available on record.

7. As per the report of the Village Administrative Officers, they have seen the sand was heaped on the left bank of the river and the night watchman of the Dam has stated in his statement that it had happened during the previous night. Despite the Watchman is an important witness, he was not enquired and he is not a witness on the side of the prosecution to speak about the facts as to who had involved in lifting the sand from the river bed during previous night. Neither the driver of the vehicle by name Thirunavukarasu has



been enquired by the prosecution to state about the further facts. The charge sheet has been filed stating that two Village Administrative Officers and two Village Assistants who did not witness the occurrence but who only inspected the premises, after having got a call about illegal mining. None of the witnesses have spoken anything about the petitioners / accused 2 and 3; when there is no overtact on the part of the petitioners, it is unnecessary to put them under trial.

8. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court held in ***STATE OF HARYANA VS. BHAJANLAL [1992 SUPP (1) SCC 335]***.

"The following categories can be stated by way of illustration wherein the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible



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guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R, do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a



police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. The principles laid down in the said case is squarely applicable to



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the present case also, as there is no material available against the petitioners and subjecting the petitioners for trial, will not serve any useful purpose. For the offences which had occurred in the year 2012, the charge sheet has been filed after 5 years i.e., during 2017. The learned counsel for the petitioners submitted that the case itself is barred by limitation in view of Section 468 Cr.P.C.

The Criminal Original Petition stands **allowed**. The proceedings as against the petitioners/ Accused 2 & 3 in C.C.No.23 of 2017, on the file of the Judicial Magistrate No.1, Udumalpet, is quashed. Consequently, connected miscellaneous petition is closed.

05.12.2022

Index: Yes/No
jrs



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To:

1. The Inspector of Police,
Amaravathi Nagar Police Station,
Tirupur District.

2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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