



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.24176 OF 2021

AND

CRL.M.P.NO.13337 OF 2021

Velu

... Petitioner/
Solo Accused

Vs.

State Represented by,
The Inspector of Police,
Perunagar Police Station,
Kancheepuram District.
(Crime No.225 of 2017).

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.225 of 2017 on the file of the respondent, quash the same.

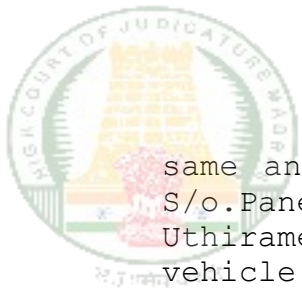
For Petitioner : Mr.Swamisubramanian

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.225 of 2017, on the file of the respondent Police.

2.The gist of the case is that on 14.08.2017, one Reena, Sub Inspector of Police attached to the respondent Police along with other Police personnels were on patrol duty near river bed at Cheyyar, at the time, one person was coming in a vehicle viz., TVS XL bearing registration No.TN 21 BB 6571, carrying 50 kg of river sand. When the person was stopped and enquired with regard to river sand, he informed that he had no receipt for the



same and he disclosed his name as Velu, the petitioner herein, S/o.Paneer Selvam, No.14 Mariyamman Kovil Street, Melapakkam, Uthiramerur. Thereafter, the petitioner was arrested and the vehicle was seized. Since there was no public witness around, Seizure Mahazar was prepared in the presence of the Police, at about 04.15 p.m. Thereafter, the FIR in Crime No.225 of 2017, for offence under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 was registered on 14.08.2017, against which, the present Criminal Original Petition.

3.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case. At the time of occurrence, the petitioner was not arrested and he had no knowledge about registration of the present FIR. Though the FIR was registered on 14.08.2017, till date the petitioner was not arrested. Neither bail nor anticipatory bail was filed by the petitioner. The learned counsel further submitted that till date, the FIR not forwarded to the concerned Court. Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 being a non-cognizable offence, the respondent Police has no authority to register the case and investigate the same, without permission of the concerned Magistrate. In this case, no such permission obtained from the concerned Magistrate by the respondent Police. The maximum punishment for violation of Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1947, is only two years with fine of Rs.25,000/- and the same is barred by the limitation to take cognizance after three years as per Section 468 of Cr.P.C. In this case, admittedly, the FIR registered on 14.08.2017, till return of copy application i.e., on 17.09.2021, no charge sheet filed before the concerned Court.

4.The learned counsel further submitted that the petitioner applied for post of Grade-II Police Constable/Grade-II Jail Warden and Fireman and participated in the selection process, which got selected. When his application was sent for Police verification, to his shock and surprise he came to know that a case is pending against him. On 17.09.2021, when the petitioner filed copy application for FIR before the concerned Court, the Court had returned the copy application informing that no FIR filed. He further submitted that the foundational aspects of the case is not shaky, since the offence is a non-cognizable offence. Added to it, in this case, the informant herself registered the FIR and investigated the case, which is not proper. Hence, he prayed for quashing of the FIR against him.

5.In support of his submissions, the learned counsel for the petitioner filed typed set containing the copy of Hall Ticket,



copy of the Call Letter and the copy of the returned copy application.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that when the respondent Police was on patrol duty near river bed at Cheyyar, the petitioner came in a vehicle viz., TVS XL bearing registration No.TN 21 BB 6571, carrying 50 kg of river sand, without any receipt for the same. After enquiry, the petitioner was arrested and the vehicle was seized. Since there was no public witness in the scene of occurrence, Seizure Mahazar was prepared in the presence of the Police, at about 04.15 p.m. In this case, the petitioner is not the owner of the vehicle and the investigation is yet to be completed. He fairly submitted that the FIR can be registered under the Mines and Minerals (Development and Regulation) Act, 1957 along with other IPC offences. In this case, admittedly, the FIR registered only under Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957, which might not be proper.

7.This Court considered the rival submissions and perused the materials available on record.

8.It is seen that the petitioner shown as accused in Crime No.225 of 2017, for offence, under Section 21(1) of the Mines and Minerals Act, (Development and Regulation) Act, 1957. Admittedly, the FIR registered only under the provisions of Mines and Minerals Act, (Development and Regulation) Act, 1957, which is a non-cognizable offence. As per Section 155 Cr.P.C., no Police shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. In this case, admittedly, the respondent Police failed to obtain any order from the concerned Magistrate. Added to it, the maximum punishment for offence under Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 is only two years or with fine which may extend to twenty-five thousand rupees. In this case, the offence took place on 14.08.2017, till return of copy application i.e., on 17.09.2021, no charge sheet was filed before the concerned Court.

9.On the submissions of the learned Additional Public Prosecutor, it is seen that in this case, charge sheet is yet to be filed. The petitioner with great difficulty, had cleared the examination in uniformed service. He hails from the ordinary family background and he has lot of hope in getting employment in uniformed service. Due to the pendency of the above FIR, the selection process might get affected. The case of prosecution is that 50 kg of river sand was transported by the petitioner in his vehicle, which cannot be termed for any commercial purpose.



Further, in this case, the seizure was made in the presence of Police witness and no independent witness examined to that effect and no reason given by the respondent Police. Further, how 50 kg weight arrived is without any reference. The foundational aspect of registering FIR for non cognizable offence without permission of concerned Magistrate, is bad in law.

10. In view of the above, the continuation of the investigation against the petitioner would amount to abuse of process of law and hence, this Court is inclined to quash the FIR against the petitioner.

11. This Criminal Original Petition is allowed and the FIR in Crime No.225 of 2017, on the file of the respondent Police is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Perunagar Police Station,
Kancheepuram District.
2. The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.Swamisubramanian, Advocate, S.R.Nos.3171 & 3233

Cr1.O.P.No.24176 of 2021

EV(CO)
RLP(24/01/2022)