



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022

Pronounced on : 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.OP (MD) No.1531 of 2022

and

CRL.MP (MD) Nos.1111 & 1112 of 2022

WEB COPY

1.P.Periyasamy

2.P.Babu

3.P.Arunraja

... Petitioners /Accused Nos.1 to 3

vs.

1.The Inspector of Police,

District Crime Branch,

Madurai District, Madurai.

...1st respondent / Complainant

2.A.Muhammed Ali,

Village Administrative Officer,

Naveenipatti Village,

E.Malampatti, Melur Taluk,

Madurai District.

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC, to call for the records pertaining to the impugned Charge Sheet in PRC No.48 of 2021 on the file of the Judicial Magistrate Court No.1, Madurai in Crime No.20 of 2015 dated 31.01.2015 Offences under Section 447,379,420,430,434,465,467,468,471,304 (ii) r/w 109, 114,511 of IPC and 3(i)(ii) &4 TNP(PDSL) Act, 1992 & 6r/w 3(a), 4(a) Explosives and Substances Act 1908 r/w 120(B) of IPC in so far as the petitioner/Accused Nos. 1 to 3 and quash the same as illegal.

For Petitioners : Shri.N.R.Elango, Senior Counsel
for Mr.J.Udhayakumar

For Respondent No.1 : Shri.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

ORDER

The petitioners are figuring as A1 to A3 in PRC No.48 of 2021 on the file of the Judicial Magistrate Court No.1, Madurai. The case is presently pending at the stage of committal. There are totally 15 accused in this case. The accused are said to have committed the offences under Sections 447, 379 of IPC, 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 r/w. 4(1), 4(2)(A), 4(3) and 21(b)(5) of Mines and Minerals (Development and Regulation) Act @ 447, 379, 420, 430, 434, 465, 467, 468, 471, 304 (ii) r/w 109, 114, 511 of IPC, 3(i)(ii) & 4 of Tamil Nadu Property

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(Prevention of Damage and Loss) Act, 1992 & 6 r/w 3(a), 4(a) of the Explosives Substances Act, 1908 r/w. 120(B) of IPC. The case was registered as Crime No.20 of 2015 on the file of the District Crime Branch, Madurai based on the information provided by the Village Administrative Officer of E.Malampatti Village. The petitioners upon being implicated filed CrI OP(MD)No.3713 of 2015 for quashing the same. This Court vide order dated 21.04.2017 noted that the first information report was registered on 31.01.2015 and that the investigation was stayed on 10.03.2015. Since the police were not given any breathing time to proceed with the investigation, the quash petition was dismissed with a direction to the police to proceed with the investigation. Thereafter, the final report was filed and was taken on file by the jurisdictional magistrate in PRC No.48 of 2021. It is at this stage this petition has been filed for quashing the proceedings insofar as the petitioners are concerned.

2.The learned Senior Counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds. He drew my attention to the materials enclosed in the typed set of papers. He contended that the continuance of the impugned prosecution against the petitioners herein would constitute an abuse of legal process. He called upon this Court to quash the impugned proceedings so as to secure the ends of justice. Per contra, the learned Additional Public Prosecutor appearing for the prosecution submitted that no case for quashing has been made out. He pointed out that the Hon'ble Supreme Court in a catena of decisions has categorically held that the power to quash the criminal prosecution is an extraordinary power and that it should be sparingly exercised. He also contended that this Court cannot embark upon a meticulous analysis of the factual aspects. His objection is that consideration of the contentions of the learned Senior Counsel would necessarily involve undertaking such a factual probe. He placed considerable reliance on the order dated 22.10.2019 made in CrI OP(MD)Nos.6125 and 8762 of 2019 wherein quite a few decisions of the Hon'ble Supreme Court governing the exercise of the power under Section 482 of Cr.PC have been referred to. According to him, there is no merit in this quash petition.

3.I carefully considered the rival contentions and went through the materials on record. The first petitioner Thiru.P.Periyasamy was granted lease for quarrying multicolored granites over an extent of 1.23.5 hectares in certain survey numbers in E.Malampatti Village, Melur Taluk, Madurai District for a period of twenty years under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 vide G.O (3D) No.46 dated 29.10.2003. The other two petitioners are his sons. In the said G.O, a number of conditions have been stipulated. One such condition is that five meters safety distance shall be left for Navankudikulam Kanmoi.

4.The prosecution case is that when the lease granted area was

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inspected by the mining officials on 27.01.2011, a number of violations were found. The safety distance was not maintained. As per the evaluation report, there was illicit quarrying of granite to the tune of 13,966.18 cubic meters in and outside the lease granted area. Based on the same, the District Collector, Madurai issued show cause notice dated 29.01.2011. The petitioners offered their reply. According to the department, the petitioners had caused loss to the tune of Rs.55.86 crores to the government. The Village Administrative Officer lodged information before the District Crime Branch, Madurai on 31.01.2015 leading to registration of Crime No.20 of 2015 for the offences mentioned above.

5.The question that falls for consideration is whether the petitioners deserve to be deleted from the array of accused. I can take judicial notice of the fact that mining scam in Madurai District was exposed in the year 2011. What was only whispered till then became a subject matter of open discussion. The predatory activities of the persons associated with what is known as PRP group came under intense scrutiny. Punitive action was launched but one is yet to see its logical conclusion. The persons associated with the said PRP group are figuring as accused in this case also. It is interesting to note that Shri.P.R.Palanisamy who is shown as A4 was not implicated in the FIR in the first instance. Only following a nudging from this Court, he came to be arrayed as an accused. The information lodged by the Village Administrative Officer does not even mention the name of P.R.Palanisamy. Section 40 of the Code of Criminal Procedure, 1973 casts a duty on the officer employed in connection with the affairs of a village to make report in respect of certain crimes committed within his territorial limit when he has information of the same. Section 40 of Code of Criminal Procedure, 1973 is as follows :

"40.Duty of officers employed in connection with the affairs of a village to make certain report.

(1) Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting-

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

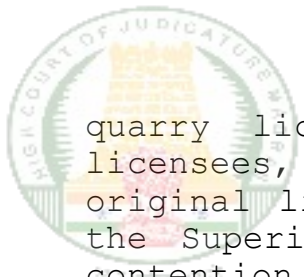
(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, section 144, section 145, section 147, or section 148 of the Indian Penal Code (45 of 1860) ;



among them.

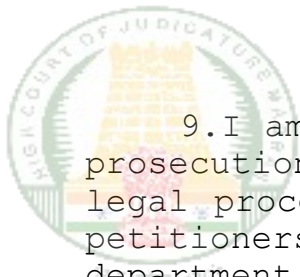
6.The defence put forth by the petitioners is that they had sold away the lands in question on 10.07.2008 (Document No.3496 of 2008) in favour of P.R.Palanichamy, the managing partner of PRP Exports. It is obvious that the first petitioner did not follow the statutory procedure before making the alienation. The first petitioner is definitely liable to be prosecuted if selling lease granted lands without getting prior permission from the department constitutes an offence under law. The first petitioner also will have to independently face the assessment proceedings initiated by the District Collector. The only issue before me is whether for the illicit mining and the other illegal activities that were detected when the inspection took place on 27.01.2011, the petitioners herein deserve to be prosecuted. It is beyond dispute that the first petitioner herein had sold the lease granted lands as well as the other lands measuring an extent of 7 acres and 21.5 cents in favour of the fourth accused on 10.07.2008 under a registered sale deed bearing Document No.3496/2008. His specific contention is that he stopped the quarrying activities on 15.06.2007 itself and that he sent the surrender Form-C on 20.07.2007. Unfortunately, there is no material in support of the said assertion. It is required that the surrender application should be sent through registered post. The petitioners have not enclosed any postal receipt. They have also not enclosed any acknowledgment given by the department. That is why I have specifically observed that the petitioners will have to be dealt with for breach of procedure. While the sale appears to be in breach of license conditions, that the sale took place is beyond dispute. The purchaser, namely, P.R.Palanisamy, the managing partner of PRP exports had also effected mutation in the revenue records (Patta No.2651). Patta in respect of the lands has been standing in the name of the 4th accused since August, 2008.

7.There is absolutely nothing on record to show that the petitioners were associated with the offending acts. The primary document on which the prosecution relies is the license issued in the name of the first petitioner. In the FIR, the occurrence period is mentioned as from 14.11.2008 to 09.10.2012. The Superintendent of Police, Madurai District had sent a communication to the District Collector, Madurai vide letter bearing Na.Ka.No.48712/C1/M.Ma/2013 dated 03.09.2013 that it has been revealed that the lease granted area was not under the control of the first petitioner after 10.07.2008. This communication and the response from the mining department have been enclosed in the typed set of papers filed by the learned Additional Public Prosecutor and therefore, this Court would be justified in looking into the same. The Superintendent of Police, Madurai sent such a communication after enquiring into the petition given by the first petitioner on 16.08.2013. The Superintendent of Police had noted that since the



quarry license continued to be in the name of the original licensees, permits had been taken by PRP group under the name of the original licensees. This observation found in the communication of the Superintendent of Police furnishes a complete answer to the contention advanced by the learned Additional Public Prosecutor that transport permit issued in the year 2010 stood in the name of the first petitioner herein. What is surprising is that even though the Superintendent of Police had sent such a communication on 03.09.2013 severely indicting PRP group, in the information lodged by the VAO on 31.01.2015, P.R.Palanisamy had been conveniently left out.

8.The statements recorded under Section 161 of Cr.PC are blissfully vague. All the witnesses were examined only in February 2015. A.Muhammed Ali who was holding additional charge as VAO, E.Malampatti talks only about the inspection that took place on 07.08.2012 and 09.10.2012 and subsequently. He has no knowledge about what happened earlier and his statement does not implicate the petitioners herein in any manner. The statement of Sudhanthira Gandhi, the Village Assistant of E.Malampatti Village also parrot-like repeats the contents of the evaluation report of the inspection team of the mines department. Sudhanthira Gandhi was working as Village Assistant right from the year 1990. He confirms that P.R.Palanisamy and his power agent Muthukumar used to visit the quarry site from the year 2007 itself and that in the year 2008, P.R.Palanisamy purchased the lands in question through his power agent and then got his name entered in the revenue records also. The statement of Sudhanthira Gandhi, the Village Assistant of E.Malampatti village recorded on 15.02.2015 reinforces and confirms the defence taken by the petitioners herein. The statement of Arumuga Nayinaar, the Assistant Director of Geology and Mining, Madurai District is to the effect that in the quarry for which license was issued in the name of the first petitioner irregularities had been committed and that there was revenue loss. There is nothing in his statement to implicate that the petitioners herein had committed the offending activities either personally or in association with others. The said list witness charges the petitioners with culpability only on the basis that the first petitioner was the license holder. The statement of Mookkiah, the Village Assistant of E.Malampatti Village since 2010, also does not contain any material to implicate the petitioners herein. He does not have any personal knowledge. The statements of the other witnesses while confirming the illicit mining do not contain any legally acceptable material to implicate the petitioners herein. The petitioners cannot be charged with vicarious liability for the offences in question. Only if they personally or in association with others had committed the offending acts, they have to face the trial. There is no such material to implicate the petitioners. There is a colloquial saying that the sins of the parents fall on children. However, the sins of the purchaser cannot fall on the seller so as to entail criminal prosecution.



9.I am more than satisfied that the continuance of the impugned prosecution against the petitioners herein would amount to abuse of legal process. The impugned proceedings are quashed as far as the petitioners are concerned. I make it clear that it is open to the department to independently proceed against the petitioners for having breached the license conditions by selling the lease granted lands to the fourth accused in the year 2008. This order quashing the impugned proceedings in favour of the petitioners shall not also enure to their advantage in the assessment proceedings that have been initiated by the administration. The petitioners also undertake to appear as witnesses and depose what as to happened if summoned by the court.

10.With these observations and clarifications, this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

skm

Note: 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 Judicial Magistrate Court No.1, Madurai
- 2.The Inspector of Police,
District Crime Branch,
Madurai District, Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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NA(CO)

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