



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 28.03.2022**

**CORAM**

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

**Crl.O.P. (MD)No.1747 of 2022**

**and**

**Crl.M.P(MD)No.1267 of 2022**

G.Sugumaran @ Sukumaran ... Petitioner/Sole Accused

Vs.

1.The State Represented by,  
The Sub-Inspector of Police,  
Aralvoimozhi Police Station,  
Kanyakumari District.  
(In Crime No.428 of 2021). ... 1<sup>st</sup> Respondent/Complainant

2.Kalayani,  
Village Administrative Officer,  
Thazhakudi,  
Kanyakumari District. ... 2<sup>nd</sup> Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.,  
to call for the records pertaining to the case registered in First  
Information Report in Crime No.428 of 2021, dated 08.07.2021 on the  
file of the first respondent and quash the same as illegal.

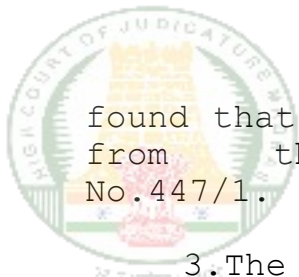
For Petitioner : Mr.G.Anto Prince

For R - 1 : Mr.B.Thanga Aravindh  
Government Advocate (Crl. Side)

**ORDER**

This Criminal Original Petition has been filed to quash the FIR  
registered in Crime No.428 of 2021 on the file of the first  
respondent.

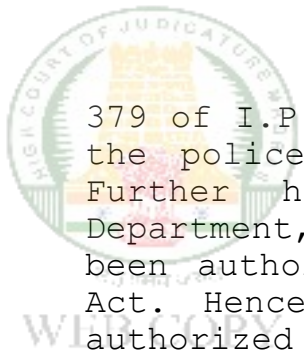
2.Based on the complaint lodged by the second respondent, the  
first registered the F.I.R in Crime No.428 of 2021 for the offences  
under Section 379 of I.P.C and Section 21(1) of the Mines and  
Minerals (Development and Regulation), Act, 1957 (hereinafter  
referred to as 'the MMDR Act') alleging that on the complaint  
received from the Chief Minister Special Cell, the second respondent  
inspected the land comprised in Survey No.447/2 to an extent of  
0.49.50 hectares belonged to the petitioner and he runs a brick kiln  
in the said land and adjacent to his land, there is a Government  
odai poramboke comprised in Survey No.447/1. The second respondent



found that the sand measuring 7020 cubic meter feet was accumulated from the Government odai poramboke in Survey No.447/1.

3.The learned counsel appearing for the petitioner would submit that the petitioner had registered his brick kiln and having manufacturing unit in his own patta land to an extent of more than 5 acres of patta land. He had got all prior permission in accordance with law to run the brick kiln manufacturing unit, as per the proceedings in ROC.No.77/G & M/2010, dated 09.04.20210. Since the petitioner was granted permission, he had applied for renewal of brick kiln registration certificate in respect of the land comprised in Survey No.629/3 of Thazhakudi Village, Thovalai Taluk as per Rule 19(2) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Accordingly, his registration certificate was renewed and the lease period was also extended from 11.09.2020 to 10.09.2023. Therefore, the petitioner never committed any offence as alleged in the F.I.R and the ingredients are not at all constituted any of the offence as alleged by the prosecution. The petitioner did not take any single unit of sand in the Government odai poramboke land comprised in Survey No.447/1. Any offence committed under the MMDR Act, cognizance can be taken by a Court only on a complaint made in writing by a person authorized in this behalf and as such, the first respondent has no jurisdiction to investigate the crime registered under the MMDR Act. The MMDR Act is being a Special Act, a statutory duty under Section 22 of the Act which makes the offences to be taken into cognizance only in the form of a private complaint. In the case on hand, the second respondent, who is being a Village Administrative Officer, lodged the complaint and the Sub-Inspector of Police attached to the first respondent registered the case. As per G.O.Ms.No.114, Industries (MMC-1), dated 18.09.2000, the person authorized to make the complaint would be the Revenue Officer not below the rank of the Inspector of Police. Therefore, the present F.I.R has been registered by the Sub-Inspector of Police and he has no jurisdiction to register any complaint under the MMDR Act.

4.The learned counsel appearing for the petitioner would further submit that the F.I.R do not disclose a cognizable offence justifying an investigation by police officers under Section 156(1) of Cr.P.C. It constitute only a non-cognizable offence and as such, no investigation is permitted by the first respondent without prior order from the jurisdictional Magistrate as contemplated under Section 155(2) of Cr.P.C. In support of his contention, he relied upon the Judgment of this Court reported in **2019 SCC Online Mad 16632** in the case of **Elangeswaran and others Vs. State represented by the Inspector of Police and another** and this Court held that in view of the bar under Section 22 of the MMDR Act, the police officer has no power to investigate in respect of the offence under Section 4(1-A) r/w 21 of the MMDR Act and the special enactment will override the general provisions of law and hence merely because Section



379 of I.P.C was also included in the F.I.R, it cannot be said that the police has got the jurisdiction to investigate the offence. Further held that as per G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006, wherein the Inspector of Police had been authorized to file a complaint under Section 22 of the MMDR Act. Hence, it will be lawful for the police concerned, as an authorized person, to file a complaint under Section 22 of the said Act before the jurisdictional Magistrate upon which the Magistrate may take cognizance. The registration of F.I.R by the police officer for the offence under the MMDR Act is not permissible under the law. The final report filed by the police officer cannot be taken cognizance by the Magistrate for the offence under the MMDR Act.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent and perused the entire materials available on record.

6.On a perusal of the F.I.R revealed that the petitioner owned a patta land comprised in Survey No.447/2 to an extent of 0.49.50 hectares and adjacent to his patta land, there is a Government odai poramboke land comprised in Survey No.447/1. The petitioner in his patta land runs a brick kiln unit under valid licence and permission. Whereas it was found that the sand measuring 7020 cubic meter feet was accumulated from the Government odai poramboke in Survey No.447/1. On the complaint received from the Chief Minister's Special Cell, the second respondent was directed to inspect the odai poramboke land and found the illegalities committed by the petitioner herein. Accordingly, she lodged a complaint and the same has been registered by the first respondent for the offences under Section 379 of I.P.C and Section 21(1) of the MMDR Act as against the petitioner.

7.Further, on a perusal of G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006, revealed that the police personnel not below the rank of Inspector of Police has no power to investigate in respect of the offence under sub-Section (4) of Section 21 of the the MMDR Act, within their respective jurisdiction. Further, as per G.O.Ms.No.12, Industries (MMC.1) Department, dated 02.02.2009, orders were issued under Section 22 of the MMDR Act authorizing the District Forest Officers and the police personnel not below the rank of Inspector of Police, to make complaint in writing by way of an affidavit to the Court of competent jurisdiction for any offence punishable under the said Act or any Rules made thereunder, in respect of cases falling within their jurisdiction.

8.It is relevant to extract the provision under Section 155(4) of Cr.P.C, which reads as follows:-



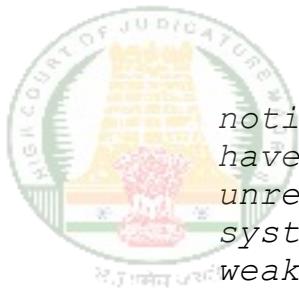
*"155. Information as to non-cognizable cases and investigation of such cases.-*

*(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."*

9.In the case on hand, as directed by the Chief Minister's Special Cell, the second respondent was authorized to inspect the place of occurrence and found that the petitioner illegally mined to the tune of 7020 cubic meter of sand in the odai poramboke land comprised in Survey No.471/1 situated at Thazhakudi Village, Thoivalai Taluk. That apart, only in the presence of Tahsildar and Surveyor, the second respondent inspected the place of occurrence and on their direction lodged a complaint. Therefore, she is the competent person to lodge a complaint before the first respondent. The first respondent being the Sub-Inspector of Police, who registered the case for the offence under Section 379 of I.P.C and Section 21(1) of the MMDR Act Immediately, after registration of F.I.R, for investigation purpose, the F.I.R has been sent to the Inspector of Police, Aralvoimozhi Police Station, Kanyakumari District for investigation. Whereas in the Judgment cited by the learned counsel for the petitioner, the sub-Inspector of Police laid charge-sheet and as such, this Court held that charge-sheet laid by the Sub-Inspector of Police is without jurisdiction. Further, as stated supra, as per Section 155(4) of Cr.P.C, the first respondent can register the case for the non-cognizable offence along with cognizable offence. Therefore, the above judgment cited by the learned counsel for the petitioner is not applicable to the case on hand.

10.In this regard it is relevant to rely upon the Judgment of the Honourable Supreme Court of India in **2014 (9) SCC 772** in the case of **State (NCT of Delhi) Vs. Sanjay**. The Honourable Supreme Court of India decided the appeals preferred against the conflicting Judgments of the Delhi High Court, Gujarat High Court, Kerala High Court, Calcutta High Court, Madras High Court and Jharkhand High Court on the question whether a person can be prosecuted for the offences under Sections 379/114 and other provisions of the Indian Penal Code on the allegations of illegal mining in view of Section 22 of the Mines and Regulation Act. The Honourable Supreme Court of India held as follows:-

*"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial*



notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and



conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1) (d) of the Code of Criminal Procedure."

The above case cited in the case of **Kanwar Pal Singh Vs. The State of Uttar Pradesh and others** reported in **Manu/SC/1776/2019**, in which the Honourable Supreme Court of India held that there is no bar on the Court from taking cognizance of the offence under Section 379 of I.P.C. The violation of Section 4 being a cognizable offence, the police could have always investigate the same, there being no bar under the Mines Regulation Act, unlike Section 13(3) (iv) of the TOHO Act.

11. Therefore, in a case where there is a theft of sand and gravel from the Government land, the police can register a case, investigate the same and submit a final report under Section 173 of Cr.P.C before the Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

12. It is seen from the First Information Report that there are specific allegations as against the petitioner, which have to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses *prima facie* commission of cognizable offence and as such, this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.



13. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019 - Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.**, which reads as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima



*facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."*

14. In view of the above discussions, this Court is not inclined to quash the First Information Report. Hence, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

**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 Sub-Inspector of Police,  
Aralvoimozhi Police Station, Kanyakumari District.

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

+1 CC to M/s.G.ANTO PRINCE, Advocate ( SR-15392[F] dated  
30/03/2022 )

Order made in

**Cr1.O.P(MD)No.1747 of 2022**  
**28.03.2022**

KG(CO)

TR(07.04.2022) 8P 4C