



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.2206 of 2022

and

Crl.M.P(MD)No.1621 of 2022

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

Vs.

1.State Rep. by

The Sub Inspector of Police,
Thattarmadam Police Station,
Kanyakumari District.

(In Cr.No.72 of 2019)

... 1st Respondent/Complainant

2.Paulkumar

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the case registered in First Information Report in Crime No.72 of 2019 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Anto Prince
For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to quash the F.I.R. in Cr.No.72 of 2019 on the file of the first respondent.

2.The case of the prosecution is that on 25.04.2019 when the *defacto* complainant inspected Puthantharuvai Kulam, on receipt of the information that the tipper lorry bearing Registration No.TN-74-AL-6201 without having any prior permission transported soil was captured by the revenue officials and hence, the said vehicle was handed over to the first respondent.

3.On perusal of FIR revealed that even according to the prosecution the petitioner's lorry was standing in Puthantharuvai Kulam to take the sand from the land comprised in S.No.197/1, Puthantharuvai Village, Sathankulam Taluk, Kanyakumari District.



Further allegation is that the owner of the lorry attempted to commit an offence of theft of sand. That apart, the petitioner is the owner of the lorry and he is running a Brick Kiln manufacturing unit, in his own patta land.

3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that investigation completed and final report has also been filed and the same was not yet taken on file.

4.On perusal of records revealed that the place of occurrence situated in S.No.197/1, Puthantharuvai Village, Sathankulam Taluk, Kanyakumari District. The statement of Village Administrative Officer recorded under Section 161(3) of Cr.P.C. revealed that tipper lorry bearing Registration No.TN-74-AL-6201 was standing in the Puthantharuvai Kulam and after seeing him, the persons inside the lorry ran away from the place of occurrence, however, no one has spoken about the presence of the petitioner, who being the owner of the lorry and there is no evidence to show that the petitioner only drove the lorry and ran away from the lorry after seeing the officials.

5.That apart, even according to the prosecution, they attempt to commit offence of theft of sand. It is relevant to extract of Section 378 of IPC is as follows:-

'Section 378 - Theft - Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.'

6.In the case on hand, the accused attempted to commit offence. In this regard, he relied upon the judgment reported in **(2019) 20 SCC 272**, in the case of **Chaitu Lal Vs. State of Uttarakhand** in paragraph No.9 as follows:-

'9.the attempt to commit an offence begins when the accused commences to do an act with the necessary intention.....'

7.In the case on hand, after seeing the officials, the person, who was driving the lorry flew away from the scene of occurrence. There is no allegation that the accused while taking sand, after seeing the officials, ran away from the scene of occurrence. The Hon'ble Supreme Court of India reported **AIR 2021 SC 5242** in the case of **State of Madhya Pradesh Vs. Mahendra** in paragraph No.12 held as follows:-

'12.There is a visible distinction between 'preparation' and 'attempt' to commit an



offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. 'Attempt' starts where 'preparation' comes to end, though it fails short of actual commission of the crime.' '

8.The above case squarely applicable to the case on hand, since the crux of the complaint itself is after seeing the officials, the persons who were in the lorry flew away from the scene of occurrence. Therefore, no offence is made out as against the petitioner. In view of the above, the impugned FIR in Cr.No.72 of 2019 and its consequential proceedings, if any are liable to be quashed.

9.Accordingly, the Criminal Original Petition is allowed and the FIR in Cr.No.72 of 2019 on the file of the first respondent is hereby quashed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

To

1.The Sub Inspector of Police,
Thattarmadam 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-19421[F] dated 19/04/2022
Crl.O.P(MD)No.2206 of 2022
and Crl.M.P(MD)No.1621 of 2022
19.04.2022

sp (CO)

SP (24-05-2022) 3P 4C
<https://hcservices.courts.gov.in/hcservices/>