



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 07.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.1984 of 2020

in

Crl.M.P. (MD)No.984 of 2020

WEB COPY

Rajendran

...Petitioner/Accused No.1
Vs.

1.State represented by,
The Sub-Inspector of Police,
Malli Police Station,
Virudhunagar District.
(Crime No.136 of 2019)

... 1st Respondent/Complainant

2. Periyasamy

...2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in the case in Crime No.136/2019 on the file of the 1st respondent and quash the same as against the Petitioner/Accused as illegal, violation of law.

For Petitioner : Mr.M.Jothi Basu
For R1 : Mr.B.Thanga Aravindh,
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed to call for the entire records connected with the impugned F.I.R in Crime No. 136 of 2019, on the file of the first respondent and quash the same.

2.According to the case of prosecution the petitioner is the owner of the land comprised in Survey No.38/1 at Ayan Nachiyarkovil Village, Srivilliputhur Taluk, Virudhunagar District. The allegation is that the vehicle of the petitioner was loaded with $\frac{3}{4}$ unit of red sand, illegally without any possessory license, by his driver. When the petitioner excavated the red sand from his own land, the offence under section 379 IPC will not attract, since no theft was made out.

3.In sofaras the offence under Section 21(5) Mines and Minerals (Development and Regulation) Act, 1957, is concerned, the second respondent lodged complaint and the same has been registered by the first respondent for the offence punishable under Section 21(5), 23 of Mines and Minerals (Development and Regulation) Act, 1957. Under Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 and Rules 2007, it is the duty of the competent authority or person authorized in that behalf by the Central Government or State



Government to file a complaint before the Court to take action against the person under the Act. Therefore, the first respondent has no say in the offence under Mines and Minerals (Development and Regulation) Act, 1957.

4. The learned counsel appearing for the petitioner also relied upon the Judgment of Hon'ble Supreme Court reported in **2014 (9) Supreme Court Cases 772**, in which the Hon'ble Supreme Court has held that

"5. Criminal Appeal Nos. 2108-2112 of 2013 In these cases, appellants are the owners of Murlidhar Stone Industries and were granted quarry lease in the seam of Village Thoriwari for excavation of mines and minerals on payment of royalty. The appellants challenged the legality and validity of mining complaint lodged by the State geologist against them for offences under Section 379/114 of IPC and under Section 21 of the MMDR Act. The appellants sought an appropriate writ or direction to quash and set aside the criminal proceedings on the same ground that Section 22 of the Act prohibits registration of FIR with respect to offences punishable under the said MMDR Act."

In 2019 SCC Online Ori 226, it is held that

"16. The aforesaid provisions contained in Section 22 of the MMDR Act and Rule 15 of the 2007 Rules, makes it abundantly clear that no Court shall take cognizance of offence punishable under the said Act or the 2007 Rules made thereunder, except upon a complaint in writing made by the competent authority or person authorized in that behalf by the Central Government or the State Government.

17. The aforesaid provisions of the Act and the 2007 Rules clearly provide that criminal prosecution can be launched only on the basis of a written complaint filed in that regard by the competent authority or the person authorized in that behalf and not otherwise. Hence a reading of the aforesaid provision makes it clear that no FIR can be registered by the police for any offence committed under Section 21 of the MMDR Act and the said provision does not contemplate investigation in a normal way by the police on the basis of an FIR but only on the written complaint to be presented to the concerned Court."



5.In view of the above, the first information report cannot be sustained as against the petitioner and it is liable to be quashed. However, the learned Additional Public Prosecutor submitted that the investigation is completed and the respondent police about to file final report before the competent Court. While admitting this petition, already interim stay granted and as if the first respondent completed investigation and yet to file final report.

6.Accordingly, the impugned First Information Report in Crime No.136 of 2019 and all proceedings on the file of the first respondent is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

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,
Malli Police Station,
Virudhunagar District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.JOTHI BASU (G.M.LAW OFFICE), Advocate (SR-10526[F] dated 08/03/2022)

ORDER IN
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in Crl.M.P. (MD)No.984 of 2020
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IMS (CO)

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