



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

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

Crl.O.P.(MD) No.4468 of 2022

and Crl.M.P(MD) Nos.3173 and 3174 of 2022

1. Murugeson
2. Lingam
3. Kumar

...Petitioners/ Accused 1 to 3

Vs.

1. The Inspector of Police
Rajathani Police Station
Theni District

...1st Respondent/Complainant

2. Mariappan
Inspector of Police
Rajathani Police Station
Theni District

...IIInd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to to call for the records in CC No. 125 of 2020 on the file of the learned Judicial Magistrate, Aranthangi and quash the same as against the petitioners.

For Petitioners : Mr.P.Senthil Kumar
For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to to call for the records in CC No. 125 of 2020 on the file of the learned Judicial Magistrate, Aranthangi and quash the same as against the petitioners.

2. The case of the prosecution is that on 16.04.2019 at about 4.30 hrs when the respondent police were engaged in patrol duty, they found the accused persons indulging in illegal sand mining near Vellaisamy Nayakkar's garden at Ramakrishnapuram using Mahindra Tractor bearing Reg. No. TN 57 F 2387 along with un-numbered trailer and one JCB bearing Reg. No. TN 60 P 9972. On seeing the police party all the accused persons ran away from the scene of occurrence, however the police apprehended first accused and on his confession he disclosed the role of the other accused persons. The respondent police has seized all the offending vehicles along with one unit of sand. Hence the case came to be registered.

3. The learned counsel for the petitioners would submit that as



per the orders passed by the Hon'ble Division Bench of this Court, while the offences committed under the Mines and Minerals Development Act, all the revenue officials are directed to make complaint after the seizure to the jurisdictional Court. A complaint has to be made immediately after seizure, preferably within a period of one week. Thereafter appropriate application can be made for confiscation, which might include a vehicle said to have been involved. Further the Hon'ble Division Bench of this Court has held that the action taken report will have to be sent by the District Collector concerned for the purpose of taking necessary action. Complainant will have to be intimated on the action taken within a period of one week from the date of receipt of the complaint. A complaint shall also be received even when made through phone calls. Complaints by an authorised person under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 or to be made immediately and not later than one week from the date of seizure. Whenever a final report is filed for the offence under Section 379 of IPC by the jurisdictional police before the jurisdictional Magistrate, the same shall also be committed to the Special Court. This is for the reason that it would be appropriate to deal with both the police case and the private complaint by the same court and in order to avoid any possible conflict.

4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondents.

5. On perusal of the entire case record, it reveals that as against the petitioners, the first respondent has charge sheeted only for the offence under Section 379 of IPC and no offence has been included under the Mines and Minerals Act, therefore the directions issued by the Hon'ble Division Bench of this Court is not applicable to the case on hand.

6. In so far as the offence under Section 379 IPC is respect of sand, there is special Court constituted under the Mines and Minerals Act cases and as such the first respondent ought to have filed the final report before the Special Court. There are specific allegations as against the petitioners to attract the offence under Section 379 of IPC.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein it has been held as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and



record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Cr1.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Cr1.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are



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allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in CC No. 125 of 2020 on the file of the learned Judicial Magistrate, Aranthangi. Hence the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petitions are closed.

11. Since the charge sheet has been filed before the learned Judicial Magistrate, Aundipatti, the entire case records in CC No.125 of 2020 on the file of the learned Judicial Magistrate, Aundipatti is hereby withdrawn and transferred to the file of the Special Court namely the learned Principal District Judge, Theni and the learned Principal District Judge, Theni on receipt of entire case records from the learned Judicial Magistrate, Aundipatti in CC No. 125 of 2020 is directed to complete the trial proceedings within a period of six months therefrom.

Sd/-

Deputy Registrar (A/C's)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Principal District Judge, Theni
2. The Judicial Magistrate, Aundipatti.
3. The Inspector of Police
Rajathani Police Station
Theni District
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

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