



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.339 of 2019

and

Crl.MP(MD)No.158 of 2019

M.Murugiah

... Petitioner/Accused No.2

Vs.

1.The State rep.by
The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District,
(Crime No.288 of 2018)

... Respondent

2.The Sub Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.

... Respondent/Defacto Complainant/
Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to CC No.444 of 2018 pending on the file of the Judicial Magistrate, Nanguneri and quash the same.

For Petitioner : Mr.R.Anand

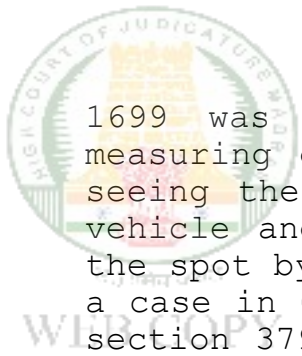
For Respondents : Mr.SS.Madhavan
Government Advocate
(Criminal side)

O R D E R

The petition has been filed seeking quashment of the case in CC No.444 of 2018 pending on the file of the Judicial Magistrate, Nanguneri.

2.The case of the prosecution in brief:-

On 25/09/2018 at about 01.00 pm, near Nanguneri Railway station on routine check up, the vehicle bearing registration No.TN-27-J-
<https://hcservices.ecourts.gov.in/hcservices/>



1699 was found loaded with river sand worth about Rs.2,000/- measuring one unit. That was intercepted by the police team. On seeing the police party, the occupants of the vehicle stopped the vehicle and fled away from that place. One person was arrested on the spot by name Chinnathurai. Based upon the above said occurrence, a case in Crime No.288 of 2018 was registered for the offence under section 379 IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.444 of 2018 by the trial court.

3. Seeking quashment of the same, this petition came to be filed by this petitioner, who has shown as A2 before the trial court.

4. Heard both sides.

5. A preliminary objection that was raised by the petitioner with regard to the legality of registering the FIR and filing of the final report before the concerned court stating that neither the de-facto complainant, nor the Investigating Officer is competent to register the case and file a report. He would rely upon the judgment of this court made in **Muthu vs. The District Collector, Pudukottai District, Pudukottai and others (WP(MD)Nos.19936 of 2017 batch etc., dated 29/10/2018)** for the purpose of argument that in respect of the offence with regard to section 21(4) of the Mines and Minerals (Regulation and Development) Act, 1954, the competent person is the revenue official and not the police official; So the registering the case itself is not legal.

6. This position has been clarified by the Hon'ble Supreme Court in the case of **Jayant and others Vs. State of Madhya Pradesh [(2021) 2 SCC 670]**. The Hon'ble Supreme Court is of the considered view that the offence under section 379 IPC and section 22 of the MMDR Act, 1957 are operating in different fields and the police is not incompetent to register the case under section 379 IPC against the accused persons.

7. The operative portion of the judgment is extracted hereunder:-

"13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

(i) that the learned Magistrate can in exercise of powers Under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR



even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar Under Section 22 of the MMDR Act shall not be attracted;

(ii) the bar Under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

(iii) for commission of the offence under the Indian Penal Code, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

(iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order Under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

(v) in a case where the violator is permitted to compound the offences on payment of penalty as per Sub-section 1 of Section 23A, considering Sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences



punishable under the MMDR Act or any Rule made thereunder so compounded.

However, the bar Under Sub-section 2 of Section 23A shall not affect any proceedings for the offences under the Indian Penal Code, such as, Sections 379 and 414 Indian Penal Code and the same shall be proceeded with further.

14. In view of the above and for the reasons stated above, the appeals filed by the violators/private Appellants are partly allowed, to the extent quashing the proceedings for the offences under the MMDR Act - Sections 4/21 of the MMDR Act only. The appeal preferred by the State of Madhya Pradesh stands dismissed.

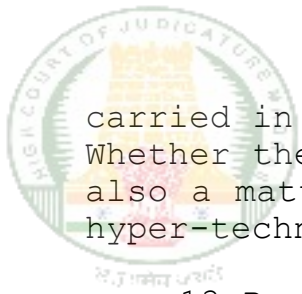
8. This judgment of the Hon'ble Supreme Court gives a complete answer to the argument advanced by the petitioner. So the registration of the case under section 379 IPC and filing of the final report is not barred by section 22 of the Act.

9. The second contention is that the petitioner is affected with severe disease on his leg. So the contention on the part of the prosecution that the petitioner fled away from the place of occurrence is highly improbable, since he is cardiac patient also. This cannot be taken into account since it is a medical reports. It is a matter for consideration by the trial court.

10. The next contention of the petitioner is that the complainant should not be the Investigating Officer, which may caused prejudice to his interest. But this position has also been clarified by the Hon'ble Supreme Court to the effect that where any such prejudice has been caused to the accused, because of the issue, it is a matter for consideration during the course of trial. Except stating that there was a prejudice because of the investigation, the ground of prejudice has not been mentioned in the petition. As mentioned earlier, it is a matter for consideration during the course of trial.

11. The next contention is that the wife of the petitioner was granted quarry licence for quarrying sand. So there is no necessity for the petitioner to illegally transport the river sand. This is a far-fetched argument, which cannot be taken into account in this petition. It is a matter for consideration by the trial court.

12. It is the further argument of the petitioner that as per the allegation that has been made against the petitioner, he was only the occupant of the vehicle and the vehicle is not owned by him. In such circumstances, the ingredients of section 378 IPC are not attracted. His idea behind this argument is that there is an allegation to the effect that the petitioner committed theft of river sand through the vehicle. The occupant cannot be fastened with any criminal liability in respect of the article that has been



carried in the vehicle. This argument is also a farfetched argument. Whether the petitioner is involved in the theft of the river sand is also a matter for consideration during the course of trial. Such a hyper-technic view cannot be taken into account at this stage.

13.Perusal of the records prima facie shows that this petitioner has also involved in the offence. So, I am of considered view that this is not a fittest case to quash the proceedings. The petitioner has to face the trial process.

14.In the result, this criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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, Tirunelveli.
- 2.The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.
- 3.The Sub Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.OP(MD)No.339 of 2019

Date:28.04.2022

SA(06.06.2022) 5P 5C