



BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.10179 of 2020

and

Crl.M.P (MD)No.4724 of 2020

WEB COPY

S.Shanmuga Vadivel

... Petitioner

Vs.

1.The State represented by,
The Inspector of Police,
Thirukostiyur Police Station,
Sivagangai District.
(Crime No.154 of 2020).

2.Jeyalakshmi,
Thasildar,
Thiruppathur Taluk,
Sivagangai District.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Crime No.154 of 2020 on the file of the first respondent police for the alleged offence Under Section 21(4) of Mines Coal Minerals(Development and Regulation) Act,1957.

For Petitioner : Mr.S.Ramsundar Vijayraj

For RR 1 & 2 : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed to quash the F.I.R in Crime No.154 of 2020 on the file of the first respondent.

2.The second respondent/defacto complainant lodged a complaint alleging that on 06.09.2020 when the defacto complainant made an inspection on the premises of the petitioner comprised in Survey No.111/1 situated at Thenmapattu Group Village, Thiruppathur Taluk, she found that the trees were illegally cut in Thirupattur Taluk. The said land is classified as punja land admeasuring 2.12.0 hectares and patta stands in the name of the petitioner and he is a native of Kottaiyiruppu Village and stocked savudu sand approximately around 400 tipper lorry loads in the said land. On the basis of the said complaint, the first respondent registered a case in Crime No.154 of 2020 for the offence under Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the MMDR Act').



3.The learned counsel appearing for the petitioner would submit that the impugned F.I.R is registered only for the offence under Section 21(4) of the MMDR Act. As per Section 22 of the MMDR Act, no Court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government. Therefore, the first respondent has no authority or power to register any criminal case under Section 21(4) of the MMDR Act, as against the petitioner. The Division Bench of this Court in the case reported in **2012 (2) CTC 369 [Sengol and others Vs. State, the Inspector of Police, R.S.Mangalam Police Station, Ramanathapuram District]** held that only a private complaint will be permissible as per Section 22 of the MMDR Act. Further, it is an enabling provision for seizure of the tools equipment, vehicle or other things, it cannot be termed as offence under Section 21(4) of the MMDR Act. The petitioner already informed the District Collector, Sivagangai about the legality and lawful storage of savudu sand which was obtained from the lawful lessee P.Thavamani, who was a lawful licensee to remove savudu sand etc and he was also granted permission on 10.03.2020 by the District Collector.

4.The learned counsel appearing for the petitioner further submitted that since the first respondent has no competency to register the case for the offence under Section 21(4) of Cr.P.C, the second respondent lodged a private complaint for the very same allegation and the same has been taken cognizance in Spl.C.C.No.172 of 2020 on the file of the Special Court, Sivagangai and it is pending. While pending this petition, the first respondent altered the offence under Section 379 of I.P.C and Section 21(4) of MMDA Act.

5.The second respondent filed a counter-affidavit and revealed that during the inspection regarding the information that the trees which were illegally cut might have been kept in the custody of the petitioner's premises, the second respondent found the storage of sand approximately around 50 tipper loads of sand and 450 tipper loads of savudu in Survey No.111/1 which is classified as punja land admeasuring 2.12.0 hectares. Hence, the second respondent lodged the complaint before the first respondent and the case has been registered in Crime No.154 of 2020 for the offence under Section 21 (4) of the MMDR Act. Further, on a perusal of the trip sheet attached along with the representation, it is seen that it was issued only for red soil while the seized minerals are savudu sand which is no way related to the Collector's proceedings which permits to remove red soil alone from S.F.No.24/3 etc in Karaiyur Village of Tiruppathur Taluk. Further, it was reported by the Firka Surveyor, Thiruppathur that the said patta land of the petitioner is 1.5 feet lower than Kandaramanikam road as against 9 feet as contended by the petitioner.



6.The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that while pending the F.I.R, on investigation, the offence was also altered into Section 379 of I.P.C and Section 21(4) of the MMDA Act. The second respondent also filed a private complaint and the same has been taken cognizance in Spl.S.C.No.172 of 2020.

7.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondents and perused the materials available on record.

8.On a perusal of the records revealed that the petitioner is the sole accused in the F.I.R registered in Crime No.154 of 2020 for the offence under Section 21(4) of the MMDA Act. It is relevant to extract the provision under Section 21(4) of the MMDA Act, which reads as follows:-

"21(4). Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf."

9.Further, it is also relevant to extract the provision under Section 22 of the MMDA Act, which reads as follows:-

"22.Cognizance of offences.-No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

10.Therefore, the first respondent is not the competent authority to register the criminal case, that too, for the offence under Section 21(4) of the MMDR Act, when there is a statutory prohibition under Section 22 of the MMDR Act. The second respondent can very well file a private complaint under Section 200 of Cr.P.C before the concerned Special Court as constituted under the MMDR Act. While pending this quash petition, the first respondent altered the offence into Section 379 of I.P.C and Section 21(4) of the MMDR Act. Thereafter, issued notice under Section 41(A) of Cr.P.C to conduct enquiry. That apart, the second respondent now filed a private complaint for the very same occurrence to take action as against the petitioner under Section 21(4) of the MMDR Act and the same has been taken cognizance in Spl.S.C.No.172 of 2020 on the file of the Special Court, Sivagangai. Hence, for the very same



occurrence there shall not be two complaints and it is not permissible under the Criminal Procedure Code. Though the first respondent altered the offence into Section 379 of I.P.C, while pending investigation, initially the first respondent registered the case only under Section 21(4) of the MMDR Act. Further, the second respondent has now lodged the private complaint and the same has been taken cognizance for the offence under Section 21(4) of the MMDR Act. In view of the above, the present F.I.R registered is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner.

11. Accordingly, the FIR in Crime No.154 of 2020 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 (CS III)

// 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 Inspector of Police,
Thirukostiyur Police Station,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.(S.Ramsundarvijayraj)VEERA ASSOCIATES, Advocate
(SR-13303[F] dated 21/03/2022)

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MGJ(31.03.2022) 4P 4C