



Crl.O.P.(MD) No.13019 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.(MD) No.13019 of 2022

and

Crl.M.P(MD) Nos.8255 and 8256 of 2022

1. Jeba Victor,
2. Kannadhasan,
3. Shijin,
4. Mahadevan,
5. Vibin,
6. Ravichandran,
7. Suji,
8. Pratheepkumar,

: Petitioners

Vs

- 1.The State represented by  
The Inspector of Police,  
Kollencode Police Station,  
Kanyakumari District.  
Crime.No.162 of 2022

2. Antoniammal,  
The Inspector of Police,  
Kollencode Police Station,  
Kanyakumari District.

: Respondents



*Cr.L.O.P.(MD) No.13019 of 2022*

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to the P.R.C.No. 23 of 2022, on the file of the Judicial Magistrate No.II, Kuzhithurai in connection and quash the same

For Petitioner : M/s. Micheal Heldon Kumar.S,

For Respondents : Mr.E.Antony Sahaya Prabahar,

Additional Public Prosecutor

### **ORDER**

This criminal original petition has been filed seeking to quash the charge sheet in P.R.C.No. 23 of 2022, on the file of the learned Judicial Magistrate No.II, Kuzhithurai.

2.The learned Counsel appearing for the petitioner submitted that on 06.05.2022, at about 14.00 hours, when the respondent police making vehicle checkup, found that the petitioners' vehicle 407 Tipper Lorry bearing Registration Nos.TN 75 AK 8049, TN 75 AU 4087, TN 28 AK 7759, TN 11 F 6688, TN 75 AE 5386 containing five unit of hard rock without any permit chit and the respondent police seized the vehicles along with hard rock, case has been registered in Crime No.162 of 2022, after investigation, final report



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has been filed and it was taken on file as P.R.C.No.23 of 2022 by the learned Judicial Magistrate No.II, Kuzhithurai. Further he submitted that at the time of transporting the hard rock, the petitioners and other lorries had valid permit and the same was issued by the license holder namely Mrs.Santhi. Therefore, transporting the hard rock with permit, no offence is made out. Hence, continuing the criminal proceedings is misuse of process of Court and pleaded to quash the same.

3.The learned Additional Public Prosecutor submitted that at the time of seizing the vehicle, no permit was handed over to the respondent police. On 06.05.2022, the petitioners and five vehicles were permitted to take the hard rock from the place of Simon Colony, Kalkulam Vattam to Vallavilai (Kollencode). But the petitioners were intercepted and their vehicles were seized by the complainant at Neerodi Tollgate as they travelled two villages beyond the delivery point. Therefore, the said permit cannot be considered as a valid one. Hence, the trial has to be conducted to find the truth and to arrive at just decision. Further he pleaded to quash this petition.



4.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC**

**India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.



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(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.



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5.I have considered the matter in the light of the submissions made by both the parties.

6.On a perusal of records, it reveals the fact that on 06.05.2022, the complainant checked the vehicles along with other police officials at Neerodi check post and found that the petitioners and other vehicles came from Neerodi Poliyur Road from the East side in the vehicles bearing Registration Nos. TN 75 AK 8049, TN 75 AU 4087, TN 28 AK 7759, TN 11 F 6688 and TN 75 AE 5386. Each tipper lorry contains five unit of hard rock worth about Rs.10,000/- and they were not produced any valid permit for taking the hard rock. Hence, the vehicle was seized along with the accused persons and a case has been registered in Crime No.62 of 2022, for the offence under Section 379 IPC. After investigation, charge sheet has been filed and the same was taken on file in P.R.C.No.23 of 2022, on the file of the learned Judicial Magistrate No.II, Kuzhithurai and the case is posted on 04.08.2022 for the appearance of the accused persons.

7.On a perusal of the alleged permit chit, it is seen that the vehicle was permitted to take the hard rock from Simon Colony and to deliver the same at



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Vallavilai (Kollencode). But, the vehicle was seized near Neerodi Check post, which is unconnected with the delivery point. This fact is disputed by the petitioners. The disputed fact has to be decided by let in the evidences before the trial Court.

8.On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.

9.At this stage, it cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is dismissed. Consequently, the connected miscellaneous petitions are closed.

20.07.2022

Internet:Yes  
Index:Yes/No  
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**V.SIVAGNANAM, J.**

lr

To

1.The Inspector of Police,  
Kollencode Police Station,  
Kanyakumari District.  
Crime.No.162 of 2022

2. Antoniammal,  
The Inspector of Police,  
Kollencode Police Station,  
Kanyakumari District.

2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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