



**Crl.O.P.(MD) No.15134 of 2022**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 24.08.2022**

**CORAM**

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

**CRL.O.P (MD) No.15134 of 2022**

**and**

**CrL.M.P(MD) No. 9905 of 2022**

1. S.John @ Johnalbonze

2. Jayakumar

3. Muneeswaran

... Petitioners/ Accused 1 to 3

**Vs**

1. The State Represented by  
The Inspector of Police,  
Sivagiri Police Station,  
Tenkasi, Tenkasi District.  
Crime No.281 of 2022)

... 1<sup>st</sup> Respondent/ Complainant

2. Amirtharaj

... 2<sup>nd</sup> Respondent/ Defacto Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the impugned FIR in Crime No.281 of 2022, on the file of the first respondent police and quash the same in so far as the petitioners are concerned.

For Petitioner : Mr.G.Thalaimutharasu

For R1 : Mr.M.Sakthi Kumar  
Government Advocate (Crl. Side)



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## **ORDER**

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This Criminal Original Petition has been filed to quash the FIR in Crime No.281 of 2022, on the file of the first respondent police and quash the same in so far as the petitioners are concerned.

### 2. Brief facts of the case:

On 01.08.2022, at about 07.00 a.m., while the second respondent/ defacto complainant along with his police party while on patrolling duty at Kalingal Odai situated at the Western side of Sivagiri engaged in preventing the illegal transportation of sand theft, they found one S.John @ Johanalbonze has loaded one unit of Tank Sand through a vehicle Tractor bearing Registration No.TN-18-S-3143 along with un-numbered Green Coloured Tractor 2) Jayakumar has loaded one unit of Tank Sand through a vehicle bearing Registration No.TN-84-J-1510 and 3) Muneeswaran Karuppaiya has loaded one unit of Tank Sand through a vehicle Tractor bearing non-cleared number plate with Tractor. When the first respondent waylaid the above said Tractors and Trailors, they found that the accused persons have illegally taken the Tank Sand from Chinna Avudaipperi



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Kanmai at Sivagiri for selling the Tank sand to the Brick Klin for earning more money illegally. Hence, the present petition is filed.

3. The learned counsel for the petitioners submitted that actually the petitioners have been permitted by the District Collector, Tenkasi District to take the Tank Sand (Karambai Sand) from Upper Vaippar basin Division for a period of five days from 01.08.2022 to 05.08.2022 from 08.00 a.m to 06.00 p.m vide proceedings bearing No.K.25/2022/AEE(S) – 46/ dated 29.07.2022, thereby the petitioners have obtained valid permit and pass from the Revenue Official to transport the Tank Sand (Karambai Sand) for their agricultural purpose. While so, on the date of occurrence I.e., on 01.08.2022, when the petitioners have taken the Karambai Sand in their respective tractor with Trailor to a tune of one unit each at 08.00 a.m. after filling the vehicles with Karambai Sand from Chinna Avudaippeti Kanmai and when they came out from the spot, the first respondent along with his police party waylaid the petitioners' vehicles alleging that, they had not transported the sand within the permitted time and thereby, they committed the offence as alleged in the FIR. The learned counsel for the petitioners further submitted that the petitioners have taken the Karambai Sand by



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08.00 a.m only which was also recorded in the entry pass issued by the Assistant Engineer, (WRO) Upper Vaippar Basin Division, Sivagiri. Even though the first respondent police have caught the petitioners only at 09.30. a.m but in the FIR itself, the time of capturing the alleged Tractors with Trailors was mentioned as 07.00 a.m. Hence, he prays this Court to allow the Criminal Original Petition.

4. The learned Government Advocate (Criminal side) appearing for the first respondent submitted that the permission was granted only morning 08.00 a.m., to evening 06.00 p.m but in the Tractor transported sand from morning 06.00 a.m itself. Therefore, the case has been registered.

5. I have considered the submission made by the learned counsel on either side.

6. On perusal of the impugned FIR, the allegation is that on 01.08.2022, at about 07.00 a.m., while the second respondent/ defacto complainant along with his police party on patrol duty at Kalingal Odai situated at the Western side of Sivagiri engaged in preventing the illegal



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transportation of sand theft, they found one S.John @ Johanalbonze has loaded one unit of Tank Sand through Tractor bearing Registration No.TN-18-S-3143 along with un-numbered Green Coloured Trailor, Jayakumar has loaded one unit of Tank Sand through a vehicle bearing Registration No.TN-84-J-1510 and Muneeswaran Karuppaiya has loaded one unit of Tank Sand through a vehicle ie., Tractor bearing non-cleared number plate with Trailor. When the first respondent waylaid the above said Tractors and Trailors, they found that the accused persons have illegally taken the Tank Sand from Chinna Avudaipperi Kanmai at Sivagiri for selling the Tank sand morning 08.00 a.m to evening 06.00 p.m in which time permission was granted. In this case, it is alleged that they have taken the sand morning 06.00 a.m., which is not the permitted time. However, on a perusal of the records, it is seen that the FIR itself was registered only at 09.30 am. Hence, this Court can come to the conclusion that the petitioners could have transported the sand in the permitted time. In these circumstances, continuance of the prosecution against the petitioners would amount to abuse of process of Court. Accordingly, the same is liable to be quashed, since it satisfied with the parameters set out in the judgment of the Apex Court in *State of Haryana and Ors vs Ch.Bhajan Lal and Ors* and *Neeharika*



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***Infrastructure Pvt.Ltd vs State of Maharashtra and others*** reported in **2021 SCC**

***On line SC 315.***

7. In view of the above, I am inclined to quash the FIR in Crime No. 281 of 2022 against this petitioners. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

**24.08.2022**

Internet:Yes./No  
Index:Yes/no  
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To

1. The Inspector of Police,  
Sivagiri Police Station,  
Tenkasi, Tenkasi District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**V.SIVAGNANAM, J.**

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ORDER IN  
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