



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

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Crl.O.P.(MD)Nos.19964 and 19965 of 2018

and

Crl.MP(MD)Nos.9164 and 9166 of 2018

(1)Crl.OP(MD)No.19964 of 2018:-

1.Mohamed Sheriff

2.Palraj

: Petitioners/A5 and A6

Vs.

1.State represented through

The Inspector of Police,
Kotticode Police Station,
Kanyakumari District,

(In Crime No.86 of 2011) : 1st Respondents/Complainant

2.The Village Administrative Officer,

Mecode Village,
Kanyakumari District.

: 2nd Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in PRC No.13 of 2018 pending on the file of the Judicial Magistrate No.1, Padmanabhapuram and quash the same.

(2)Crl.OP(MD)No.19965 of 2018:-

Anitha Rajabai

: Petitioner/A8

Vs.

1.State represented through

The Inspector of Police,
Kotticode Police Station,
Kanyakumari District,

(In Crime No.86 of 2011) : 1st Respondents/Complainant

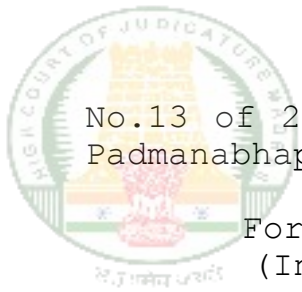
2.The Village Administrative Officer,

Mecode Village,
Kanyakumari District.

: 2nd Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in PRC

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No.13 of 2018 pending on the file of the Judicial Magistrate No.1, Padmanabhapuram and quash the same.

For Petitioners
(In both cases)

: Mr.K.Samidurai

For Respondents
(In both cases)

: Mr.B.Nambi Selvan
Additional Public Prosecutor

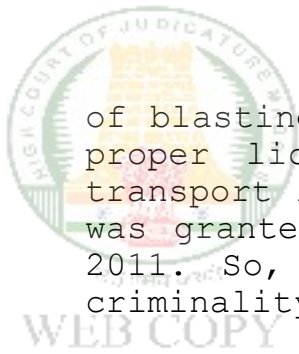
COMMON ORDER

These criminal original petitions are filed seeking quashment of the PRC No.13 of 2018 on the file of the Judicial Magistrate No.1, Padmanabapuram, respectively.

2.The case of the prosecution in brief:-

The de-facto complainant was working as a Village Administrative Officer and he lodged a complaint stating that on 31/05/2011 at about 6.00 am, the Revenue Department officials RDO, Tashildhar, Kalkulam Taluk, Village Administrative Officer of Verkilambi, inspected the place called 'Kayalkarai Pulikattu'. At that time, they found that one Appukuttan, Selvaraj, Manokaran, Chandran, Mohamed Sherif, Palraj and Velkilambi Manokaran were found in committing illegal sand mining activity in survey No.854/2, which is the Government poramboke land. From the place of occurrence, documents as well as the material objects were seized. So on the basis of the complaint given by the 2nd respondent, a case in Crime No.86 of 2011 has been registered for the offences under sections 465, 468, 471, 379 IPC and section 8(ii)(iii), 5(a) of Explosives Substances Act, 1908 and section 4(1), 4(1-A), 21(i) of Mines and Regulation and Development Act, 1957 r/w 36(4)(1) of the Tamil Nadu Mines and Minerals Construction Rule, 1859. After completing the formalities of investigation, final report was filed before the committal court namely the Judicial Magistrate No.1, Padmanabapuram, which was taken cognizance in PRC No.13 of 2018. The offences alleged against these petitioners are under sections 465, 468, 471, 379 IPC and 8(ii) (iii) of the Tamil Nadu Property Damages and Loss Act, 1992, sections 3(a) and 5(a) of Explosives Substances Act, 1908 and section 4(1), 4(1)A, 21(ii) of the Mines and Minerals (Development and Regulation Act), 1957 r/w section Rule 36(4)(1) of the Tamil Nadu Minor Minerals Concession Rules, 1859.

3. Seeking quashment of the same, these petitions have been filed by the petitioners on the ground that the second respondent, who is the de-facto complainant is not the authorised person under section 22 of the Mines and Mineral (Development and Regulation) Act, 1957 to lodge a complaint. A8 was having valid permission for using the explosives and for conducting quarry operation. She conducted the quarry operation, as per the licence condition and that was undertaken only in her patta land and only for the purpose



of blasting the rocks for quarrying activities, she was issued with proper licence, which was also valid upto March' 2017 and the transport licence was also valid upto March 2018 and the 8th accused was granted quarry licence for the period of 5 years from 2006 to 2011. So, explosives have been used for lawful act in which no criminality has been involved.

4.Heard both sides.

5.The petitioners are arrayed as A5, A6 and A8 in the committal proceedings. The allegation against the petitioners is that these petitioners along with other co-accused persons were found using the explosives for blasting the rocks and those persons were found in the place of occurrence itself. From that place, as stated above, articles as well as the documents have been seized by the Revenue Officials, who went on surprise inspection to the site.

6.As mentioned above, it is the case of the prosecution that the 8th accused namely Anitha Rajabai was granted quarry licence in respect of survey Nos.521/3A, 521/4B, Ponmanal Village, Kalkulam Taluk, for a period of five years. The date of order is 19/02/2009. So it is valid upto 2014. The date of occurrence is stated to be 31/05/2011. So according to the learned counsel appearing for the petitioners, quarry operation was carried out in the land, for which licence was also granted. But reading of the FIR shows that illegal quarry operation was carried on in Survey Nos.866/2, 854/1, 854/7, 854/2, 856/12 at Mekottu village, whereas the quarry licence was granted in respect of the above said survey numbers situated in Ponmanal Village, Kalkulam Taluk. It is also seen in the file and during the course of investigation, it was also found that in respect of quarry operation in the licensed area, they have been carrying quarry operation, in the non licensed area, more particularly, in Survey No.854/2, which is the Government poromboke land. Even though, the case has been registered along with penal provisions of IPC and Explosives Substance Act, 1908, the offence under the Tamil Nadu Mines and Minerals (Development and Regulation) Act, has also been included. But however, the committal court was conscious enough with regard to the development of law. So, it has not taken cognizable for the offences under the provisions of Mines and Minerals (Development and Regulation) Act. It has taken cognizance for the offence under sections sections 465, 468, 471, 379 IPC and 8(ii) of the Tamil Nadu Property Damages and Loss Act, 1992, section 3(a) and 5(b) of Explosives Substances Act, 1908.

7.The contention on the part of the petitioners that the offence under the provisions of Mines and Minerals (Development and Regulation) Act is a non-cognizance offence and the 2nd respondent, who is the Village Administrative Officer of the concerned village is not competent to file a complaint before the police and the police has also no power to take the cognizance and investigate the matter, is no more a issue now. In view of the above judgments cited

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8.Let us concentrate only with regard to the offence that has been taken cognizance by the committal court. The articles, which were seized from the place, were also sent to the forensic scientific lab and they have been scientifically examined. Since *prima facie* materials have been collected during the course of investigation to show that illegal quarrying operations have been carried out by using the forged document in Government poramboke land, by utilizing the explosives, which requires proper trial. Stay has been granted by this court only on the ground that the provisions of Miners and Minerals Act is a non cognizable offence and there is a bar under section 22 of the Mines and Minerals Act, 1971. But from the perusal of the records, as it is seen that the petitioners approached this court by misconception of facts. The ground, which has been raised by the petitioners is not available at this stage.

9.Whether these petitioners are engaged or engaging parties for the purpose of carrying out the illegal mining activities in the above said Government poramboke land as well as in the land in respect of which, quarry licence has not been granted in favour of A8 are the matter for trial.

10.Now the 8th accused, as mentioned earlier, has been granted quarry licence only in respect of the land in survey No.821 of Ponmanai Village, Kalkulam Taluk. But as mentioned earlier, the mining operation was conducted by the accused in Survey Nos.866/2, 854/1, 854/7, 854/2, 856/12 at Mekottu village, The memo records consisting survey Nos.866/2, 885, 854/1, 854/7, 856/1, 856/2 is also produced. 'A' register copy in respect of Survey No.854/2 shows that the quarry licence was granted in the name of Mohamed Sherif, who has shown as A5. He was also granted quarry licence in Survey No.866/1, Mecode Village, Kanyakumari District for the period of five years. But here as mentioned earlier, the date of occurrence is stated to be 31/05/2011. On the date of the above said occurrence, it appears that he was not granted any quarry licence in respect of the above said survey numbers, which were mentioned in the FIR. But these survey numbers are not mentioned in the FIR and only Survey No.866/2 is mentioned. 10.Similarly quarry licence granted in favour of one V.Jeba Dhas which is also subsequent to the above said occurrence period. In respect of survey No.854/1, one Appukutton is stated to be the owner of the land in survey No.854/1. Devid Edward was the owner of survey No.856/2. But these documents cannot be taken into account for quashing the proceedings, since it is the specific case of the petitioner that on the date of the occurrence, quarry licence was obtained in respect of those survey numbers.

11.So considering the seriousness of the allegation made against the petitioners, I find absolutely no reason to quash the criminal proceedings and it must be concluded to its logical



12.In the result, these criminal original petitions are
dismissed. Consequently connected Miscellaneous Petitions are
closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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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 No.1,
Padmanabhapuram,Kanyakumari.

2.The Inspector of Police,
Kotticode Police Station,
Kanyakumari District,

3.The Section Officer,Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

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

+2 CC to M/s.K.SAMIDURAI, Advocate (SR-14418[F] dated 25/03/2022)

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-14419[F] dated 25/03/2022)

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MGJ(25.05.2022) 5P 9C