



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.20665 of 2021
and
Crl.M.P. (MD) .No.11771 of 2021

Murugan

... Petitioner/Accused No.1

Vs.

1. The State Represented by,
The Inspector of Police,
Medical College Police Station,
Tirunelveli City. ... Respondent/Complainant
(Crime No.123 of 2021)

2. Muthupandi,
The Special Revenue Inspector,
Geographing and Mining,
Tirunelveli. ... Respondent/Defacto Complainant

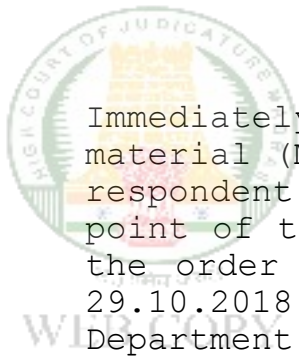
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the case in Crime No.123 of 2021 pending on the file of the Inspector of Police, Medical College Police Station, Tirunelveli City and quash the same as against the petitioner.

For Petitioner : Mr.R.Anand
For R-1 : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed challenging the F.I.R in Crime No.123 of 2021 pending on the file of the Inspector of Police, Medical College Police Station, Tirunelveli City and quash the same.

2. The case of the prosecution is that the complaint of the second respondent, the Special Revenue Inspector attached with the Geology and Mining Department, Tirunelveli is as follows. On 27.11.2021 at 8.30 A.M., when he was in the vehicle checkup nearby to Lakshmi Mahal, Seenivasan Nagar, V.M.Chathiram, Palayamkottai Taluk, he found a 407 Tipper Lorry bearing its Registration No.TN 75 5352 containing a unit of M.Sand without any permit chit.



Immediately, he has taken the lorry with the legally purchased material (M.Sand) and entrusted the same to the custody of the first respondent along with the petitioner who was the driver at that point of time. He also requested the first respondent, pursuant to the order passed by this Court in W.P.(MD).No.19936 of 2017 dated 29.10.2018 and on the basis of the G.O.(Ms).No.170, Industrial Department (MMC2) dated 05.08.2020, F.I.R is to be registered for the offence under Section 379 of IPC and accordingly, the present F.I.R has come into existence.

3. The learned counsel for the petitioner submitted that the entire allegation is raised on the ground that at the time of transporting the M.Sand, he had transit pass for transporting the M.Sand legally. However, the petitioner failed to produce the same at the time of inspection and as such, the F.I.R came to be registered. He has also produced the copy of the transit pass to transit the M.Sand in the lorry tipper bearing Registration No.TN 75 5352.

4. The learned Government Advocate(Criminal Side) rightly pointed out that the transit pass stands in the name of one Shanmugam, who is the driver of the other lorry, whereas, the case of the petitioner is that the petitioner is the driver-cum-owner of the lorry and the transit pass was issued in the name of the petitioner and he could not able to produce the same at the time of inspection.

5. That apart, when the vehicle was seized and produced before the learned Magistrate, the engine number and chassis number differed from the vehicle and the registration certificate. Therefore, the first respondent could not able to deposit the said vehicle, since the petitioner also manipulated the engine number. Therefore, the prayer sought for in this Criminal Original Petition cannot be considered.

6. In this regard, it is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019** - **Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.**, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate



the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

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5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

7. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original

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Petition stands dismissed. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (AD II)

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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 Inspector of Police,
Medical College Police Station,
Tirunelveli City.
2. The Special Revenue Inspector,
Geographing and Mining,
Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD) .No.20665 of 2021
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MGJ(17.03.2022) 4P 4C