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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/11/2022

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.1092 of 2022

and

Cr1.MP(MD)No.13944 of 2022

K.O.R.Senthamarai Kannan : Petitioner/A5

Vs.

State through

The Inspector of Police,
Keelavalavu Police Station,

Madurai District.

: Respondent/Complainant

Prayer:- This Criminal Revision has been filed under section 397 and 401 of the Criminal Procedure Code to call for the records in Cr.MP No.1073 of 2022, dated 25/07/2022 in Special SC No.23 of 2021 on the file of of the Special Court to deal with the case of the offences in contravention of the prevision of the Mines and Minerals (D & R) Act, Madurai and set aside the same.

For Petitioner : Mr.T.K.Gopalan

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

**ORDER**

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This criminal revision has been filed against the order passed in Cr.MP No.1073 of 2022, dated 25/07/2022 in Special SC No.23 of 2021 on the file of of the Special Court to deal with the case of the offences in contravention of the prevision of the Mines and Minerals (D & R) Act, Madurai.

2.The case of the prosecution in brief:-

A complaint was registered on the basis of the information furnished by the de-facto complainant stating that for the past one month, illegal mining quarry operations are taking place in Melur, Vellalur, Mattangipatty, etc. It is further stated that the above said activities are being carried out by encroaching the Government canal poramboke, Kalam poramboke and water catchment area, etc. The above said occurrence places were inspected by him. The company called 'Om Sri Granites' trespassed into the Kattazhagan water catchment area in S.F No.44 measuring about 0.46 acres in Vellalur Village. They also placed the granite blocks obstructing the flowing of water. On enquiry, he came to know that in



2005 onwards the above said encroachment occurred. In spite of the instructions, the above said granite blocks were not removed. On the basis of the complaint, the case was registered in Crime No.222 of 2012 for the offences punishable under sections 447, 420, 430, 434, 465, 467, 471, 304(ii) IPC r/w 511, 109, 114 IPC and sections 6 and 3(a) and 4(a) of Explosive Substances Act, 1908 r/w 120-B IPC.

3.This petitioner is arrayed as A5 in the final report. Before framing of the charges, this petitioner filed the impugned petition before the trial court stating that in the final report, one Mohan Das has stated as LW28, has also filed a evaluation report. But purposely, he omitted to inspect the waste granites stones kept in S.Nos.213/1A, 1C and 2A of Thaniyamangalam Group, Melur Taluk. When the failure on the part of the expert, a wrong indication to the prosecution for lodging the complaint. So if the evaluation of the above said stocks are undertaken, then it will come around 200 crores. So petition has been filed seeking an appointment of Dr.Mr.Kanishkan, who worked as former Director of Geological Survey of India to inspect and survey the area



6.The learned Additional Public Prosecutor would



submit that so far, charges have not been framed and the offence is of the year 2012 and only in 2021, the investigation was completed and final report was also filed and one after another, the accused filed repeated petitions making unreasonable request and discharge application.

7. Now a short point, which arises for consideration is whether even before framing of charges, such a petition is maintainable?

8. The answer to this issue can be found out in the judgment of the Hon'ble Supreme Court, which rules the field till now, in the case of ***State of Orissa Vs. Debendra Nath Padhi (AIR 2005 SCC 359)***, which is to the point that the materials that have been placed by the prosecution alone can be taken into account. But however, the documents, which are of the sterling quality can be taken into account at this stage, which is also settled position of law now. So when we approach this petition from this angle, the answer that can be made is that such an attempt on the part of the petitioner is not at all maintainable. If the court considers that the evaluation



9. In the result, this criminal revision fails and
name is **dismissed**. Consequently, connected



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Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Inspector of Police,
Keelavalavu Police Station,
Madurai District.
- 2.The Special Court to deal with
the case of offence in contravention
of Provisions of the Mines and Minerals
(D & R) Act, Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G . ILANGO VAN , J

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