



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Delivered on : 28.01.2022

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.OP(MD)No.14080 of 2017 &

Crl.M.P. (MD)No.9439 of 2017

and

Crl.O.P. (MD)No.6675 of 2019 &

Crl.M.P. (MD)Nos.4489 & 4490 of 2019

Crl.O.P. (MD)No.14080 of 2017:-

1.C.Azad @ Azad Mohammed

2.C.Rajkaboor

3.K.Heera Lal

4.R.Kasaniya

... Petitioners / A7 to A10

Vs.

1.The State,

Rep. through the Inspector of Police,

Keelavalavu Police Station,

Melur, Madurai District. ... 1st Respondent / Complainant

[Crime No.233 of 2012]

2.The Assistant Engineer,

Public Works Department / Water Source,

Periyar Main Channel,

Sub-Division No.IV,

Melur,

Madurai District.

... 2nd Respondent /

De-facto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records of the case in P.R.C.No.13 of 2013, on the file of the learned Judicial Magistrate, Melur, and quash the same as against the petitioners.

For Petitioners

: Mr.S.Saravanakumar

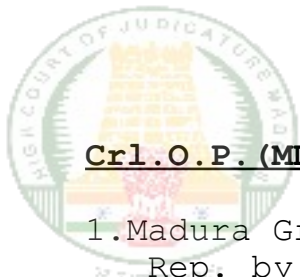
For Respondents

: Mr.Hassan Mohammed Ali Jinnah

Public Prosecutor &

Mr.A.Thiruvadikumar

Additional Public Prosecutor



Crl.O.P. (MD)No.6675 of 2019:-

1.Madura Granite Company,
Rep. by Panneermohamed,
786, Madurai Main Road,
Melur,
Madurai.

2.Rabeek Raja

3.Anwar Ali

4.Panneer Mohamed

5.Nagoor Hanifa

6.Nasar

7.Vadivelu

8.Kamarutheen

... Petitioners / A1, A2, A4 to A6
& A11 to A13

Vs.

1.The State,

Rep. through the Deputy Superintendent of Police,
Melur Sub-Division, Madurai District.

2.The Inspector of Police,
Keelavalavu Police Station,
Melur, Madurai District.
[Crime No.233 of 2012]

... Respondents 1 & 2 /
Complainant

3.The Assistant Engineer,
Public Works Department / Water Source,
Periyar Main Channel,
Sub-Division No.IV,
Melur,
Madurai District.

... 3rd Respondent /
De-facto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the impugned charge sheet in S.C.No.627 of 2018, on the file of the learned I Additional District and Sessions Judge, Madurai, and quash the same as against the petitioners.

For Petitioners : Mr.S.Saravanakumar

For Respondents : Mr.Hassan Mohammed Ali Jinnah

Public Prosecutor &

Mr.A.Thiruvadikumar

Additional Public Prosecutor



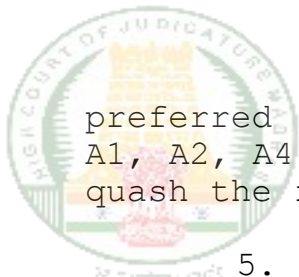
COMMON ORDER

The respondent Police received a complaint dated 05.10.2012, from the Assistant Engineer, Public Works Department / Water Source, Periyar Main Channel, Sub-Division No.IV, Melur, alleging that in the Government Poramboke land, where the water body and canal is located, the accused persons have damaged the canal and encroached the land by dumping quarry waste. They removed boundary stones of the Vedankulam Kanmoi in S.No.251 of Keelavalavu Village and have also dumped quarry waste in the land, which has obstructed the water flow through the canal, thereby, damaged public property worth about Rs.20,00,000/- and to restore the bund of the water body and Canal, the State may incur an expenditure of Rs.15,00,000/-.

2. According to the complainant, he on receiving information that there is damage to the public property viz., Kuthanchetti @ Vedankulam water tank, conducted inspection on 20.07.2012 and found the encroachment, damage to the canal and dumping of quarry waste as stated above. On investigation, the second respondent found that the act was done by the Partners of Madura Granites and their employees. In spite of request made to them to remove the encroachment and restore the canal, they refused, hence, the complaint against the Partners of Madura Granites and the persons, who are in the Management of the Company, has been registered.

3. The complaint was registered as Crime No.233 of 2012 and taken up for investigation. After examining 21 witnesses, final report was filed on 22.03.2013 against A1 to A13 alleging that first accused firm viz., Madura Granites Company is a Partnership Firm, consisting of second and third accused as Partners. They were given granite quarry lease by the Government to an extent of 5.45.0 Hectares land in S.Nos.246/1-B, 246/2 and 246/10 at Keelavalavu, vide G.O.(3D)No.IV (MMB1), dated 08.01.2001. However, without confining their quarry activities within the said survey numbers, they have encroached upon S.No.251, an extent of 2.10.5 Hectares, which is not the least. The said survey number belongs to the Government. The water body viz., Vedankulam Kanmoi is maintained by the Public Works Department. The rain water collected in the Kanmoi stored and used for agriculture and feed the cattle, thereby, had committed the offences punishable under Sections 120-B, 147, 447, 430 and 434 of I.P.C. and Section 3(i) and (ii) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 read with Sections 109, 114 and 149 of I.P.C.

4. The final report in P.R.C.No.13 of 2013 was committed to the Court of Sessions, vide order dated 10.10.2018, by the learned Judicial Magistrate and the learned Principal District Judge made over the case to the learned I Additional and District Judge, who took up the case in S.C.No.627 of 2018. Meanwhile, A7 to A10



preferred Crl.O.P.(MD)No.14080 of 2017 to quash the final report. A1, A2, A4 to A6 and A11 to A13 filed Crl.O.P.(MD)No.6675 of 2019 to quash the final report.

5. The grounds, on which, the final report sought to be quashed are as below:-

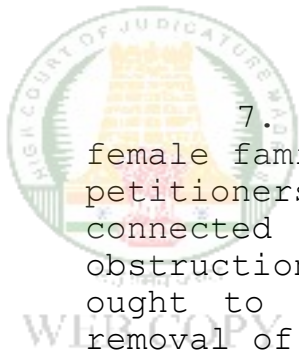
(i) The complaint alleges that the accused have dumped granite wastage on the bunk of Vedankulam Kanmoi and its water catchment area since 2005. However, there is no single piece of complaint from the public from 2005 to 2013. This by itself, a proof that the present complaint is purely a motivated case.

(ii) The statements of witnesses are stereo type and it does not disclose any specific overt act on any accused with time and date. Witnesses 3 and 4 are the Staff and working in the Public Works Department for several years, but they have not whispered anything about the encroachment or obstruction of Canal during the complaint came to be registered. This clearly indicate that the witnesses are set up witnesses and the case is purely abuse the process of law.

(iii) There is no material to show the accused persons form the unlawful assembly on the place of occurrence at any given point of time.

(iv) There is no material to implicate A7 to A10 that they cause injury to the work of irrigation or committed criminal trespass or destroyed the landmark fixed either as representative of the Madura Granites or Partners of the Madura Granites. In fact, the prosecution has not even produced a document to show that the Madura Granites Company is the Partnership Firm, consisting of A2 and A3 as Partners.

6. In a quash petition filed by A1, A2, A4 to A6 and A11 and A13 in Crl.O.P.(MD)No.6675 of 2019, it is in addition contended that the petitioners are no way connected with the Firm Madura Granites Exports except Panneer Mohamed, who is the Proprietor of the Firm. While it is wrongly contended by the prosecution that Madura Granites is a Partnership Firm, they have not even produced the Partnership Deed to substantiate their claim the perfunctory investigation by the prosecution clearly gets exposed by describing the Madura Granites as Partnership Firm and arraying A2 and A3 as Partners even without any iota of material.

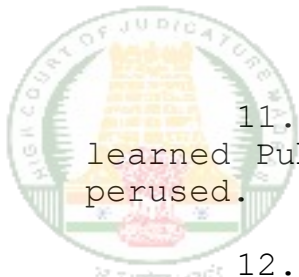


7. The learned counsel for the petitioners submitted that the female family members are also implicated in this case to harass the petitioners even though there is no material to show that they are connected with the affairs of the Company. If there was any obstruction to the canal as spoken by the witnesses, the prosecution ought to have first proceeded under Section 133 of Cr.P.C. for removal of nuisance, instead, a case has been registered against the petitioners when no cognizable offence is made out against them.

8. Madura Granites have no quarry in Keelavalavu Village. Whereas the de-facto complainant stated that the quarry owners of Keelavalavu Village had dumped quarry waste in the Kanmoi and obliterated the Canal. When Madura Granites Export Company have no granite quarry in the Village, implicating Madura Granites and its Proprietor Peer Mohammed is unsustainable in law. Whatever little material available for the prosecution is only against the Madura Granites Exports and only the Company and its Proprietor shall be liable to face the prosecution if any. The present charge sheet against others are not maintainable and liable to be quashed. The contradictory statement of the alleged eyewitness is sufficient to hold that the case is false, frivolous and will not sustain trial and if any trial is conducted, it will be farce and harassment to the petitioners.

9. The learned Public Prosecutor per contra submitted that the specific case of the prosecution as per the final report is that Madura Granites is a Partnership Firm Rabeek Raja - A2, Senthil Kumar - A3 are its Partners. 4th Accused - Anwar Ali, 5th Accused - Panneer Mohamed, 6th Accused - Nagoor Hanifa, 7th Accused - Azad @ Azad Mohammed, 8th Accused - C.Rajkaboor are the brothers of Rabeek Raja, 9th Accused - K.Heera Lal is the brother-in-law of the second accused. 10th Accused Kasanniya is the wife of the second accused. 11th Accused - Nasar, 12th Accused - Vadivelu and 13th Accused - Kamarutheen are the persons, who are in-charge of the Company. While the Madura Granites was awarded lease to quarry 5.45.0 Hectares of land in S.Nos.246/1-B, 246/2 and 246/10 at Keelavalavu Village under the Government Order dated 08.01.2001, they have encroached upon the neighbouring land in S.No.251 to an extent of 2.10.5 Hectares, where Vedankulam Kanmoi and Canal are located. The statement of witnesses and documents collected during the course of investigation has *prima facie* indicates the petitioners are responsible for the said offences.

10. The learned Public Prosecutor in the synopsis filed along with the written statement, had submitted that the Partnership Deed though could not be produced along with the final report, the same will be produced during the trial and the fact that Madura Granites is the Partnership Firm has been ascertained through information collected from the witnesses and income tax record.



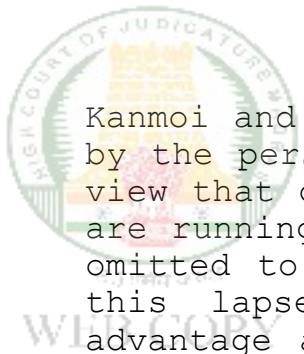
11. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The documents relied by the prosecution perused.

12. G.O.(3D)No.4, MMB-1, dated 08.01.2001, which is referred in the final report indicates that based on the quarry lease application of M/s.M.R.Granites, Melur, the Government of Tamil Nadu, has granted lease to extract multi-colour granites to an extent of 5.45.0 Hectares for 20 years from the specific survey numbers indicated in Annexure - I. Perusal of this Annexure refers to certain survey numbers, which does not correlates with the Madura Granites or the survey number as found in the final report. However, in earlier proceedings, the District Collector recommending to the Government to grant lease to M.R. Granites reveals the survey numbers, for which, lease to be granted, which includes the survey numbers mentioned in the final report.

13. A perusal of the records shows that in the wake of paper report and whistle blowing by the then District Collector, the Government waked up and started investigation of grave violation in exploiting of the granite in and around Madurai District. As a consequence, dozens of cases were registered and group of Companies holding several quarry lease and quarry both in the leased land and also in un-leased land either Patta or Government Poramboke fall under the scanner and Evaluation Committee was constituted by the Government. Simultaneously, cases were registered and investigated. This particular case also, the criminal law has been set in motion after the Assistant Engineer, Public Works Department, who inspected the Keelavalavu Village, had noticed the encroachment of S.No.251 and dumping of granite wastage in the said land, which has not only damaged the canal, but also destroyed the catchment area. The statements of the witnesses implicating the petitioners herein, who are arrayed as accused in the final report.

14. It is pertinent to take judicial note that a case registered in Crime No.166 of 2012, which is subject matter of Crl.O.P.(MD)No.12136 of 2017 pending before this Court, all these petitioners are also accused along with few others. That case is against M.R. Granites, Partnership Firm, in which, the Partnership Deed between A2 and A3 entered on 11.12.1999 is relied by the prosecution and produced as a prosecution document in the final report. There are also documents to show that A2 and A3 have communicated to the authorities claiming them as Partners of M.R. Granites.

15. From the statements and documents, this Court is satisfactorily convinced that there is *prima facie* material to show that Vedankulam Kanmoi has been encroached and dumped with granite wastage. The water body has been destroyed and the Canal has been obstructed. The statement of the witnesses indicates that boundary removed and heap of granite wastage thrown in the



Kanmoi and the statements of witnesses implicate that this was done by the persons in charge of Madura Granites. This Court is of the view that due to multiple cases initiated against same persons, who are running quarry business in different names, the prosecution has omitted to place all the relevant documents in all cases. Due to this lapse and omission, the petitioners herein try to take advantage as if there is no *prima facie* evidence against them for prosecution, which is factually not correct.

16. Therefore, this Court permits the respondent Police to conduct further investigation, if necessary, and file additional final report, wherein if there is no material against any of the accused, they can drop their name and proceed against others, who have committed the offence.

17. With above observation, both the Criminal Original Petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The I Additional District and Sessions Judge,
Madurai.
- 2.The Judicial Magistrate,
Melur, Madurai District.
- 3.The Deputy Superintendent of Police,
Melur Sub-Division, Madurai District.
- 4.The Inspector of Police,
Keelavalavu Police Station,
Melur, Madurai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.OP(MD)Nos.14080 of 2017 & 6675 of 2019

28.01.2022

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