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CRL.O.P.(MD).No.18209 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P. (MD) .No.18209 of 2019

and

CRL.MP. (MD)No.10728 of 2019

Paulsamy : Petitioner/Accused No.1

Vs.

1.The State represented by
The Inspector of Police,
Surandai Police Station,
Tirunelveli District. : Respondent No.1/Complainant

2.T.Jeya Shankar,
The Special Sub-Inspector of Police(1465),
Surandai Police Station,
Tirunelveli District. : Respondent No.2/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.192 of 2019, on the file of the learned Judicial Magistrate, Alangulam in Tirunelveli District and quash the same against the petitioner.

For Petitioner : Mr.M.Vivek Kumar

For Respondents : Mr.M.Muthumanikkam
Government Advocate(Crl.Side)

ORDER

The above Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to C.C.No.192 of 2019, pending on the file of the Judicial Magistrate Court, Alangulam, Tirunelveli District and quash the same.

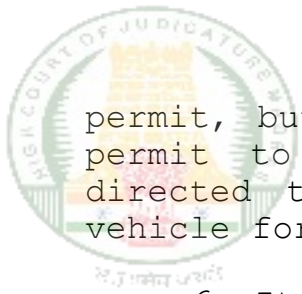
2. The petitioner is the first accused in C.C.No.192 of 2019, pending on the file of the Judicial Magistrate Court, Alangulam. The second respondent has registered a case in Cr.No.147 of 2019 on 04.04.2019 against two persons including the petitioner for the alleged offences under Section 379 I.P.C. After completing the investigation, the first respondent has filed a final report under Section 173 Cr.P.C., on 04.06.2019 against two accused including the petitioner for the offence under Section 379 I.P.C.



3. The case of the prosecution is that on 04.04.2019 at about 07.15 hours, when the second respondent and his police team were on rounds, they had intercepted a Ashok Leyland lorry bearing Registration TN-29-P-7605 near Surandai Tamil Nadu Steel Company in Surandai to Seranthamaram road and found that the petitioner was transporting the river sand illegally and that they had seized the lorry and sand and arrested the petitioner.

4. It is the specific case of the petitioner that Ashok Leyland lorry bearing Registration TN-29-P-7605 is owned by the petitioner's wife Nirmala Devi, that the petitioner and his wife have been conveying river sand by duly obtaining permit from the designated authorities, that on 15.03.2019, the petitioner's wife booked for 8.49 m³ of sand by paying the requisite amount of Rs.3,990/- and collected the sand on 03.04.2019, that due to heavy traffic and road repaid works, the petitioner had driven the vehicle slowly and he could reach Surandai in wee hours of 04.04.2019, that when he was waiting for the owner of the site in the morning, the second respondent came to that place and enquired about the stolen sand, that the petitioner had immediately produced the dispatch slip, that the second respondent took dispatch slip and kept with him and that though the petitioner had explained elaborately about the situation, the second respondent, without considering the same, has registered a false case as if the petitioner was illegally transporting the river sand. The petitioner has also produced the permit, receipts issued by the Mines Authorities in the typed set and more particularly he has produced the receipt relating to Queue No.Q632019/04/03-65.

5. As rightly pointed out by the learned Counsel for the petitioner, they have booked the sand on 15.03.2019 and he was directed to wait by giving the above said Queue number. Admittedly, the petitioner's lorry was intercepted at wee hours of 04.04.2019. It is also not in dispute that as per the permission obtained, the petitioner had transported the sand on 03rd April and according to the petitioner, he reached Surandai in the earlier hours of 04.04.2019. It is not in dispute that the petitioner's wife Nirmala Devi - owner of the lorry has filed a writ petition in W.P.(MD) No.10076 of 2019 before this Court under Section 226 of the Constitution of India for issuance of a Writ of Mandamus directing the Revenue, Mining and Police Authorities to release the lorry bearing Registration No.TN-28-P-7605 from the custody of the Inspector of Police, Surandai Police Station, on the basis of the said Nirmala Devi's representation dated 21.04.2019 within a stipulated time and the learned Judge of this Court, while allowing the petition vide order dated 25.04.2019, has specifically observed that the petitioner Nirmala Devi's vehicle was seized in connection with illegal transportation of sand, that the respondents were under



permit, but it is seen that the petitioner was having their valid permit to transport the sand in question and that therefore, directed the police authority to release the petition mentioned vehicle forthwith and without any delay.

6. It is pertinent to mention that, as rightly contended by the learned Counsel for the petitioner, the respondents therein have taken a specific stand that Nirmala Devi is having a valid permit to transport the sand in question. The learned Counsel for the petitioner would submit that in pursuance of the orders passed by this Court in W.P.(MD)No.10076 of 2019, the police authorities have released the vehicle along with the sand.

7. It is also not in dispute that after the registration of the F.I.R., the petitioner herein has filed Crl.O.P.(MD)No.11624 of 2019 under Section 482 Cr.P.C., to quash the F.I.R., in Cr.No.147 of 2019, on the file of the Surandai Police Station and this Court, considering the submission made by the learned Government Advocate (Crl.Side) that after completing the investigation, final report has already been filed and the same was pending for taking cognizance, dismissed the Criminal Original Petition and further directed the petitioner to work out his remedy in the manner known to law if he is having any grievance, after taking cognizance of the offence by the jurisdictional Magistrate.

8. When the matter is taken up today, the learned Government Advocate (Crl.Side) would fairly concede that the petitioner was having permit to transport the sand and as such, the very registration of F.I.R., and filing of the final report is not proper. Since the petitioner was having necessary permission to take the sand from Mullaiyur Depot, Koraiyar, Viralimalai, Pudukkottai District, the impugned proceeding charging him with sand theft is not legal and as such, the same is liable to be quashed.

9. In the result, this Criminal Original Petition is allowed and the impugned proceedings in C.C.No.192 of 2019, pending on the file of the Judicial Magistrate, Alangulam, as against the petitioner stand quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

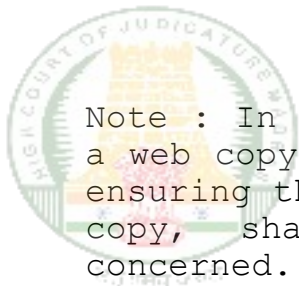
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Sub Assistant Registrar(CS)

SSL

<https://hcservices.ecourts.gov.in/hcservices/>



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To

1. The Judicial Magistrate Court,
Alangulam.
2. The Inspector of Police,
Surandai Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P. (MD) .No.18209 of 2019
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RD(17.02.2022) 4P 4C