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CrI.M.P.No.1944 of 2022 in CrI.O.P.No.3986 of 2022

CrI.M.P.No.1944 of 2022

in

CrI.O.P.No.3986 of 2022

Reserved on 09.06.2023	Pronounced on 16.06.2023
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G.CHANDRASEKHARAN, J.

This criminal miscellaneous petition is filed for staying all further proceedings in Spl.Case No.3 of 2019, on the file of the Special Court to try criminal cases involving Members of Parliament and Members of Legislative Assembly of Tamil Nadu cum Principal Sessions Judge, Villupuram, till the disposal of the main petition.

2.The petitioner is the second accused in Spl.Case.No.3 of 2018, pending on the file of the Special Court to try criminal cases involving Members of Parliament and Members of Legislative Assembly cum Principal Sessions Judge, Villupuram. The first petitioner is the father of the second accused and was a Minister of Mines and Mineral Resources Department during the period from 13.02.2007 to 15.05.2011.



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3.The allegations made against the accused in this case are that the first accused, abusing his position as the Minister of Mines and Mineral Resources Department, obtained quarrying license in favour of the petitioner/second accused and his friends and close relatives. Petitioner and accused 3, 4, 5 and 8 had mined red sand (2,64,644 lorry loads) in excess of permission granted in the license and thus, caused a loss of Rs.28,36,40,600/- to the State. That apart, accused 5, 6 and 7 had prevented the public servants from discharging their duties and made criminal intimidation against them. Thus, first accused is charged for committing offences under Sections 406, 420, 379 IPC read with 120 (B) IPC, sections 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988 and Section 4 (1), 4(1A) read with 21 of The Mines and Minerals (Development and Regulation) Act, 1957. 2nd accused/petitioner, A3, A4, and A8 are charged for the offences under Sections 406, 420, 379 IPC read with 120 (B) IPC, and Section 4 (1), 4(1A) read with 21 of The Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959. A5 is charged for the offences under Sections Sections 406, 420, 379 IPC read



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with 120 (B) IPC and Sections 353, 506 (i) IPC and Section 4 (1), 4(1A) read with 21 of The Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959 read with 120 (B) IPC. A6 and A7 are charged for the offences under Sections 353 and 506 (i) IPC. The case is pending trial. Challenging the final report filed, petitioner has filed Crl.O.P.No.3986 of 2022 for quashing the proceedings in Spl.Case.No.3 of 2018. In the abovesaid petition, Crl.M.P.No.1944 of 2022 is filed for staying all further proceedings in Spl.Case No.3 of 2019, on the file of the Special Court to try criminal cases involving Members of Parliament and Members of Legislative Assembly of Tamil Nadu cum Principle Sessions Judge, Villupuram till the disposal of the main petition.

4.The learned Senior Counsel for the petitioner argued for staying of further proceedings in Spl.Case No.3 of 2019 on the following terms:

(a) Petitioner was granted permission to mine in his own patta lands.

(b) Petitioner is not charged under the Prevention of Corruption



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(c) He is not charged with the aid of Section 120 B Cr.P.C.

(d) There was no entrustment of any property to the petitioner. He has not cheated any one. He has not stolen the property from third party and therefore, the offences under Sections 406, 420 and 379 IPC cannot be made out against the petitioner.

(e) Final report was filed on 20.12.2012. Then, after further investigation, supplementary final report was filed on 16.03.2020. The reason for filing supplementary final report is that respondent has not found any material to prosecute the petitioner and therefore, they conducted further investigation to manufacture some case and then filed supplementary final report.

(f) This case was registered by the District Crime Branch, investigated by it and filed final report, which is in violation of rule 7 of the Manual of the Directorate of Vigilance and Anti-corruption. Only



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the Vigilance and Anti - corruption department can register and investigate the case and then file a final report. Thus, there was no competency for the District Crime Branch to initiate criminal proceedings against the accused.

(g) It is seen from the proceedings issued by the District Collector, Villupuram in R.C.No.A/G&M/1840/2007 dated 04.10.2007 that old quarried pits are noticed in S.F.Nos.410/1A1, 410/9A, 410/9B, 408/1 and 434/1. Since no quarry lease was granted in the area, action was initiated by the Revenue Division Officer, Villupuram against the then pattadar of the land Thiru.Balasubramanian and penalty was levied vide the proceedings of the Revenue Divisional Officer, Villupuram in R.C.No.4/3402/02 dated 04.09.2007. It shows that even before the grant of permission for quarrying to the petitioner and the other accused, there was quarrying operation without any lease and quarried pits were found. Respondent, without taking proper measurement as to the quarrying done by the previous pattadar Thiru.Balasubramanian, made wrong measurements and calculations with regard to the alleged loss caused to



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the Government.

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(h) Assuming that there was an excess of quarrying of red sand, the option of imposing of penalty is available. It is not necessary to launch a criminal prosecution against the petitioner/second accused.

(i) Despite the fact that no criminal offence is made, FIR was registered by the District Crime Branch, Villupuram, without jurisdiction and with political motive.

Thus, the learned Senior Counsel submitted that continuance of trial proceedings against the petitioner is an abuse of process of law and if the trial proceedings is continued till the disposal of the quash petition, petitioner will be seriously prejudiced. Thus, he prayed for staying the further proceedings in in Spl.Case No.3 of 2019, till the disposal of the quash petition.

5.In reply, the learned Additional Public Prosecutor submitted that



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there was an excess quarrying to the tune of Rs.28,36,40,600/-. LW1 gave a statement stating that when an inspection was conducted by the officials, officials were threatened and told that “this quarry is belonged to Minister Ponmudi (Minister of Mines and Minerals Resources Department)”. He further stated that using the Minister's powers, petitioner and others have illegally mined the sand in excess of the permission granted, without paying the seigniorage fee and the charges for the red sand, whereby caused a loss of Rs.28,37,65,600/- to the Government. The common road in S.No.356 was destroyed for illegal mining, to an extent of 83 meters. After conducting preliminary investigation, FIR was registered and after thorough investigation, charge sheet was filed. Now the case is pending in Spl.Case No.3 of 2019, on the file of the Special Court to try criminal cases involving Members of Parliament and Members of Legislative Assembly of Tamil Nadu cum Principal Sessions Judge, Villupuram. At this juncture, quash petition cannot be entertained and thus, prayed for dismissal of the stay petition.



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6.Considered the rival submissions and perused the records.

7.For better and deeper understanding of the nature of the case registered against the petitioner and other accused, it is necessary to extract the gist of the final report filed in this case.

8.The first accused was a Minister of (Mines and Mineral Department) from 13.02.2007 to 15.05.2011. The second accused/petitioner is his son. Fourth accused is the brother - in - law of the second accused. Third accused was holding a position in the political party to which the first accused belongs. He is also a friend and confidant of the first accused. Fifth accused was managing quarries of accused 2, 3 and 4 and a close confidant of the first accused. Sixth accused is a family friend of accused 1 and 2. Seventh accused is the son - in - law of the fifth accused and an administrative assistant. Eight accused is the co-brother of the first accused and close relative of accused 2 and 4 and accused 3, 5, 6 and 7 are known to him and he was the one who is responsible for the work relating to the quarries of the



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accused 2, 3 and 4.

8.1. First accused when he was the Minister of Mines and Minerals Resources Department summoned the witness Krishnamoorthi to his house and instructed him to grant license to accused 2 and 4 for quarrying red sand in Poothurai Village in their presence and in the presence of accused 3, 5 and 8. Thus, first accused in conspiracy with accused 3, 5 and 8, abusing and misusing his official position, committed criminal conspiracy to get quarrying license in the name of accused 2 &4.

8.2.After the grant of license, second accused/petitioner though granted permission for quarrying of 10,000 loads of red sand in S.Nos.405/1B (0.52.0), 405/12 (0.35.5), quarried 33,094 loads of red sand, which is an excess of 23,094 lorry load and thus, caused a loss of Rs.2,65,58,100/- to the Government.

8.3.Second accused/petitioner was granted quarrying license in



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S.Nos.405/13 (0.34.0), 407/1A (0.26.5), 408/1B (0.16.5), 410/1A1B (0.28.0), 410/2 (0.93.5), 410/3 (0.25.5), 410/5 (0.15.0), 410/6 (0.36.5), 410/7 (0.12.5), 410/8A (0.30.0), 410/8B1 (0.15.0), 41089A2 (0.77.0), 410/9B (0.13.5), 442/1 (0.17.5) for three years to quarry 34,899 lorry loads of red sand. However, he quarried 1,85,332 lorry loads of red sand, an excess of 1,50,433 lorry loads of red sand. Thus, caused a loss of Rs.17,29,97,950/- to the Government.

8.4.Though the second accused/petitioner was granted permission to quarry 15,000 lorry loads of red sand in S.Nos.405/4 (0.35.5), 408/1A1 (0.16.0) and 410/1A/A (0.27.0), totally 0.78.5 hectares, he quarried 31,556 lorry loads of red sand which is an excess of 16,556 lorry loads of red sand. Thus caused a loss of Rs.1,90,39,400/- to the Government.

8.5.Fourth accused was granted permission to quarry 31,000 lorry loads of red sand in S.Nos.404/5 (0.14.0), 405/2 (0.69.5), 405/3 (0.15.0), 405/8B (0.14.0), 405/9 (0.13.0), 405/10 (0.05.5), 405/11 (0.06.5), 410/4



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(0.36.0). However, he quarried 69,048 lorry loads of red sand which is an excess of 38,048 lorry loads of red sand and thus caused a loss of Rs.4,37,55,200/- to the Government. Similarly, fourth accused was granted permission to quarry 38,000 lorry loads of red sand in S.Nos.408/1A1 (0.17.0), 408/2A (0.38.0), 408/5 (0.80.0) to a total extent of 1.35.0 hectares. He quarried 56,513 lorry loads of red sand which is an excess of 18,513 lorry loads of red sand. Thus caused a loss of Rs.2,12,89,950/-.

8.6.Thus accused 1, 2, 4, 8 and 3 with the help of fifth accused and with the active interference of the eighth accused, without paying proper fees to the Government had illegally quarried 2,64,644 lorry loads of red sand. Seigniorage fee for one lorry load is Rs.150/- and the value of the red sand per load was Rs.1,000/- at that point of time. Calculating at this rate, accused had not paid the sum of Rs.28,36,40,600/- to the Government and thus, caused a loss to the Government.



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8.7.The accused had also damaged the cart track in S.No.356 to an extent of 83 meters, quarried red sand and caused a loss of Rs.1,25,000/- to the Government.

8.8.When the officials made inspection at the quarry site at about 10 a.m. on 22.09.2012, accused 5, 6 and 7 had prevented them from performing their official duties challenging them as to why they came there and told them that license was granted to the first accused's son, his relative K.S.Rajamahendran and friend V.Jayachandran and also told that when the 1st accused was in power, nobody bothered to visit the quarry site and why are they visiting after the change of the Government and thus, prevented the Government officials from performing their duties.

9.From the gist of the final report filed, we can gather that when the first accused was the Minister of Mines and Mineral Resources Department, he abused and misused his position as Minister and got mining license in favour of his son, relative and friend. Abusing his official position and with the help and aid of the other accused, petitioner



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and other accused had mined in excess of the permission granted and caused loss of Rs.28,36,40,600/- to the Government.

10.As regards the submissions of the learned counsel for the petitioner that petitioner is not charged under the Prevention of Corruption Act with the aid of 120 B IPC, it is true that petitioner was charged only for the offences under Sections 406, 420, 379 IPC read with 120 (B) IPC, and Section 4 (1), 4(1A) read with 21 of The Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959. However, this is only a final report and it is for the Court to frame appropriate charges. If the Court, on going through the records finds materials to charge the petitioner under the prevention of Corruption Act, with the aid of Section 120 B IPC, appropriate charges can be framed. Final report reads that when witness Krishnamoorthi was summoned by 1st accused to his residence and told to grant license in favour of the petitioner and fourth accused, petitioner and other accused, namely, accused 3, 4, 5 and 8 were also present and it also alleged that the accused conspired with each other



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to get the license.

11.L.Krishnamoorthy's statement reads that he was summoned by the first accused and was told that, application submitted by the petitioner and Rajamahendran for quarrying should be processed without any hitch. At that time, petitioner, Rajamahendran, Jayachandran, Sadanandham, Loganathan were also present there. He also stated that normally, it would take three months for granting license, but at the instance of the Minister and the other accused, the license was granted within 20 days to petitioner and Rajamahendran. Therefore, the possibility of framing charges under the Prevention of Corruption Act against the petitioner with the aid of the Section 120 B IPC cannot be ruled out.

12.In view of the fact that petitioner was quarrying in his own patta land, there is some merits in the submissions of the learned counsel for the petitioner that the offences under Sections 406, 420 & 379 IPC cannot be made out against the petitioner. However, we have seen that



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petitioner is charged not only for the offences under Sections 406, 420, 379 IPC, but he is also charged for the offences under The Mines and Minerals (Development and Regulation) Act, 1957. The proceedings of the Distric Collector, Villupuram, in R.C.No.A/G&M/1840/2007, dated 04.10.2007, shows that quarrying lease was granted to the petitioner subject to following special conditions, in addition to the usual conditions stipulated for red earth quarrying.

13.Petitioner is charged for committing the offences under Section 4 (1), 4 (1A) read with 21 of The Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959. Section 4 (1), 4(1A) of The Mines and Minerals (Development and Regulation) Act, 1957 reads as follows:

4.Prospecting or mining operations to be under licence or lease.-

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting licence or, as



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the case may be, of a mining lease, granted under this Act and the rules made thereunder

(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

14.As per these sections no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or, as the case may be, of a mining lease, granted under the Act and no person will transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder. Violations of these provisions would attract penal consequences under Section 21 of the Act, which is imprisonment, which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.



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15.The specific allegations against the petitioner is that petitioner along with the other accused had quarried 2,64,644 lorry loads of red sand in excess of the permission granted without paying the seigniorage fee and other charges and caused loss of Rs.28,36,40,600/- to the Government. The submission of the learned Senior Counsel for the petitioner that the previous pattadar had quarried without license and that old quarried pits were not properly measured and considered for arriving at the quantum of excess red sand said to have been quarried by the petitioner, cannot be considered now, for the reason that it requires evidence for appreciation of this submission.

16.The other submission of the learned counsel for the petitioner is that when a provision for imposition of penalty is available under Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959, criminal prosecution is not justified. Reading of Rule 36 A shows that it gives two options, one is to impose penalty and the other option is criminal prosecution for punishing under Section 21 (1) of The Mines and Minerals (Development and Regulation) Act, 1957. Rule 36-A (1) of the



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Tamil Nadu Minor Mineral Concession Rules, 1959, reads as follows:

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36-A. Penalties.- (1) *Whenever any person contravenes the provisions of sub-section (1) and (1-A) of section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer as the case may be, or in the alternative, he shall be liable to be punished as provided in sub-section (1) of section 21 of the Act.*

This rule makes it clear that there are two options available as stated above to the authorities. It is not the case of the petitioner that the petitioner was made to pay the penalty and then criminal prosecution is also launched. It appears that no penalty was imposed, but only criminal prosecution is launched, which, in the considered view of this Court is permissible under law. Therefore, the submission of the learned counsel for the petitioner that launching of criminal prosecution, when there is an option for imposing penalty is not legal, cannot be accepted.



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17. With regard to the submission of two final reports, police is empowered to do further investigation with a formal approval from the Court. Accordingly supplementary final report was filed in this case and therefore, that cannot be faulted.

18. As regards the alleged violation of Rule 7 of the Manual of the Directorate of Vigilance and Anti-corruption, this rule deals with Demarcation of investigative functions of the Directorate of Vigilance and Anti-Corruption and that of the Police Department. It reads as follows:

7. Demarcation of investigative functions of the Directorate of Vigilance and Anti-Corruption and that of the Police Department.

(1) The following is the demarcation of the investigative functions of the Directorate and that of the Police Department public in the State:-

(i) The Directorate of Vigilance and Anti-Corruption will be responsible for enforcement of Law under Chapter IX of the Indian Penal Code and the Prevention of Corruption Act, including offences under



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Section 165-A of the Indian Penal Code and of conspiracy or abetment of the above provisions;*

(ii) investigation of all other offences involving Public Servants will be done by the Police Department;

(iii) Where offences under both the categories mentioned above are involved, the Directorate or the Police Department may investigate depending on what constitutes the major offence. Cases involving office bearers of Co-operative Societies may be dealt with by the Police Department. In doubtful cases, decision will be taken on mutual consultations between the Director and the Director General of Police.

(2) However, cases under Section 165-A of the Indian Penal Code, coming to the notice of the local Police or City Police or initiated by them, can be investigated by the local Deputy Superintendent of Police, or the Assistant Commissioner of Police in Madras City, despite the existence of a separate Directorate of Vigilance and Anti-Corruption.



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18.1. As per this rule, Directorate of Vigilance and Anti-corruption is responsible for enforcement of law under Chapter IX of IPC and the Prevention of Corruption Act. Chapter IX of IPC deals with offence by or relating to public servants from Section 166 to 171 IPC. However, rule 7 (3) of the Manual of the Directorate of Vigilance and Anti-corruption reads that where offences under both the categories are involved, the Directorate or the Police Department may investigate depending on what constitutes the major offence.

18.2. Major offence here is illegal mining in excess of the mining lease granted. Therefore, initiation of criminal prosecution by the District Crime Branch, Villupuram, cannot be considered as illegal.

19. From the consideration of the materials produced in this case, there are materials available to form an opinion that there are grounds for presuming that petitioner has committed the offences alleged in the final report and to frame appropriate charges. That apart, there is a bar under



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Section 19 (3) (c) of the Prevention of Corruption Act, 1988, for grant of stay. It reads as follows:

19. Previous sanction necessary for prosecution.-

(1).....

(2).....

(3).....

(a).....

(b).....

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

20. Thus, this Court is of the considered view that the prayer for staying of further proceedings in Spl. Case No. 3 of 2019, on the file of the Special Court to try criminal cases involving Members of Parliament and Members of Legislative Assembly of Tamil Nadu cum Principal Sessions Judge, Villupuram, cannot be entertained and thus, this petition is dismissed.



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21. In fine, this criminal miscellaneous petition is dismissed. The Trial Court without being influenced by any of the observations made by this Court shall proceed to dispose the case in accordance with law.

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