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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/04/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.4419 of 2023
and
Cr1.MP(MD)No.4419 of 2023

Kamalakannan : Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Alwarthirunagari Police Station,
Tuticorin District.
(Crime No.22 of 2022)

2.The Village Administrative Officer,
Tirukkalur Village,
Eral Taluk,
Tuticorin District. : Respondent

PRAYER:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in Crime No.22 of 2022 on the file of the 1st respondent Police and quash the FIR in Crime No.22 of 2022 on the file of the 1st respondent police and pass such other order.

For Petitioner : Mr.Ka.Raamakrishnan

For Respondents : Mr.R.Suresh Kumar
Government Advocate
(Criminal side)

**ORDER**

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This criminal original petition has been filed seeking quashment of Crime No.22 of 2022 on the file of the 1st respondent Police.

2.The facts in brief:-

The Village Administrative Officer of Alwarthirunagari sent a complaint stating that on 28/01/2022 at about 11.00 am, he received an information that one Kamalakannan, who is the owner of the property in Survey No.649/2 of Tirukkalur Village, Eral Taluk was digging sand without permission for constructing a house. On the basis of the above said information, a complaint was registered in CSR No.46 of 2022. Later, it was registered as a case in Crime No.22 of 2022 for the offences under section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, on 09/02/2022.

3. Seeking quashment of the above said proceedings, this petition has been filed.



4. Now the first ground raised by the petitioner is that the offence under section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 is a non cognizance offence, for which the police has no right to register FIR and investigate the matter. Another ground is that even as per the case of the prosecution, the land from which the above sand was taken belongs to this petitioner and for domestic use, no permission is required as per the Mines and Minerals (Development and Regulation) Act, 1957.

5. Heard both sides.

6. A simple point arises for consideration. No doubt that the offence under section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 is a non cognizance offence. Now, it is well settled that only a complaint by the competent authority before the Special Court will lie and the police cannot investigate the matter. If at all, the police can make an enquiry and must submit a report to the competent authority, who in turn file a complaint before the concerned Special Court. This is the proper procedure to be adopted. Here



directly, FIR has been registered and so far, the enquiry file has not been handed over to the competent authority.

7.CD file has also been called for and perused.

8.Perusal of the CD file also shows that Survey numbers mentioned in the complaint are belonging to the private persons namely Dhanasekari, Uma Maheswari and Kamalakannan and they are enjoying the property, from where the the above sand lifted. It was estimated at 520 cubic meter worth about Rs.2,32,440/-.

9.A plan approval has been sought for constructing the house in the survey No.649/2 of Awlarthiruguri Union, where the above said sand stated to be lifted. So even perusal of the CD file shows that the sand has been lifted only from the property, which belongs to the petitioner and his relatives. Rule 17 of the Tamil Nadu Mines and Minerals Construction Rules, 1959 permits quarry of sand for personal use, licence is required when it is done in a large scale and for commercial purpose.



10. Here absolutely, no commercial purpose is involved and only for domestic use for constructing a new house, the above said sand has been lifted. So, it cannot be construed as illegal one and if any violation of the owner that the sand has been lifted in a large quantity, then the petitioner can be proceeded in accordance with law. Absolutely, there is no such allegation here, done in a larger scale, other wise than for domestic purpose. So, I am of the considered view that the prosecution is a misconstrued one and liable to be quashed.

11. In the result, this criminal original petition is **allowed**. The case in Crime No.22 of 2022 on the file of the 1st respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

13/04/2023

Index:Yes/No
Internet:Yes/No

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To,

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- 1.The Inspector of Police,
Alwarthirunagari Police Station,
Tuticorin District.
- 2.The Village Administrative Officer,
Tirukkalur Village,
Eral Taluk,
Tuticorin District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J



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