



Crl.O.P(MD).No.6297 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 28.04.2023

Delivered On : 01.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.6297 of 2021

and

Crl.M.P.(MD)No.3606 of 2021

S.Vaikundarajan

...Petitioner

Vs

1.The State

Rep. By Inspector of Police,
Uvari Police Station,
Tirunelveli District.

2.Baskaran

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the entire records relating to the impugned chargesheet in PRC No.3 of 2021 on the file of the learned Judicial Magistrate at Radhapuram and quash the same.

For Petitioner	: Mr.C.Muralikumaran, Senior Counsel For Mr.M.Maharaja
For 1 st Respondent	: Mr.Ravi, Additional Public Prosecutor

ORDER

This petition is filed to quash the chargesheet in P.R.C.No.3 of 2021 on the file of the learned Judicial Magistrate, Radhapuram.



CrI.O.P(MD).No.6297 of 2021

WEB COPY

2.The case against the petitioner is that on 11.08.2016 at about 04.15 p.m., the second respondent and other government officials intercepted the vehicles that belong to A5 to A7 driven by A1 to A4 taking sand from government unsurveyed land, which is situated 100 m away from the southern side of Survey No.595 without any permit and thereby damaging the sea shore at Karaichutuputhur village. A1 to A4 have committed theft of sand for the companies of A5 to A7. On the complaint given by the second respondent and the first respondent registered a case in Crime No.83 of 2016 for the offence under Section 379 of IPC r/w. Section 21(1) of Mines and Minerals (Development and Regulation) Act and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act.

3.On the side of the petitioner, it is stated that the petitioner is the managing partner of VV Mineral and the said firm is doing business of mining minerals, processing and export especially from the seashore and adjacent to the seashore within the coastal regulation zone area with the proper mining lease and other permissions from the state and the central Government authorities. In the FIR, the petitioner was not mentioned as an accused. The second respondent has no power or jurisdiction to prefer a complaint and the complaint is only registered on assumption and presumption. There is due



Crl.O.P(MD).No.6297 of 2021

mining lease issued by the Government of Tamil Nadu in G.O.Ms.No.185

WEB COPY

Industries (MMD) Department dated 19.07.1994. The mining lease deed was executed on 29.08.1994. Subsequently, the Government of India vide MMDR Amendment Act extended the lease period up to 50 years. According to Atomic Mineral Concessions Rules, the lease period has been extended until it is exhausted. Apart from poramboke land, the firm was granted licence for a period of 30 years to carry out 90 mining activities in some of the patta lands with an extent of 7.86.5 hectares at Karaichutupudur village.

4.On the side of the petitioner, it is stated that the respondents are well aware that the firm got due permit. The petitioner is not added as an accused in the FIR. Such being the position, the first respondent deliberately included the petitioner as an accused. The co-accused A2 has filed a petition to quash against the FIR in Crime No.83 of 2016 and this Court has granted a stay order in Crl.M.P.(MD)No.4081 of 2017 in Crl.O.P.(MD)No.6063 of 2017 dated 07.05.2017. Ignoring the interim order of stay granted by this Court, the first respondent has filed a chargesheet.

5.On the side of the petitioner, it is stated that though FIR was registered for the offences under Section 379 of IPC r/w. Section 21(1) of the Mines and Minerals (Development and Regulation) Act and Section 4 of the



Crl.O.P(MD).No.6297 of 2021

Tamil Nadu Property (Prevention of Damage and Loss) Act, in the chargesheet, Section 21(1) of the Mines and Minerals (Development and Regulation) Act and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act were dropped and that the chargesheet was filed only under Section 379 of IPC r/w. Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act and prayed the above chargesheet is to be quashed.

6.On the side of the petitioner, it is stated that as per the mining lease deed dated 19.07.1994, the petitioner is having permit to do mining work in Survey No.595.

7.On the side of the petitioner, it is further stated that when the authorities dropped the offences under Section 21(1) of the Mines and Minerals (Development and Regulation) Act and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act in the chargesheet, the offence under Section 379 of IPC r/w. Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act is not sustainable. There was no intention to commit theft or to cause mischief that attract Section 379 and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act.

When the FIR was registered under Section 4 of Tamil Nadu Property



CrI.O.P(MD).No.6297 of 2021

(Prevention of Damage and Loss) Act, filing chargesheet under Section 3(1)

of Tamil Nadu Property (Prevention of Damage and Loss) Act demonstrate the falsity of the complaint.

8.On the side of the petitioner, it is stated that as per G.O.Ms.No.185 dated 19.07.1994 and G.O.Ms.No.114 dated 05.06.1995, Industries (MMD2) Department, the petitioner is holding licence and lease to mine minerals in poramboke land and as per G.O.Ms.No.115 of Industries (MMD2) Department dated 08.05.1995, the petitioner is having permit to mine minerals in patta lands. There is no independent evidence to establish the offence under Section 379 of IPC and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act. The petitioner carried out activities only with licence and permission under the said lease. As per Section 24A of the Mines and Minerals (Development and Regulation) Act, any lawful agents or servants, or workmen of the leaseholder are permitted to enter the lands at all times and they are permitted to carry out all such mining operations and that the chargesheet is liable to be quashed so far as the petitioner is concerned.

9.The learned counsel for the petitioner would rely on a judgment of the Hon'ble Supreme Court in the case of *Sharda Prasad Sinha v. State of Bihar* reported in *1997 (1) Supreme Court Cases 505*, wherein it is stated as



CrI.O.P(MD).No.6297 of 2021

follows:

WEB COPY

“Where the allegations set out in the complaint or chargesheet do not constitute any offence, the high Court in exercise of its inherent power may quash the magistrate's order taking cognizance of the offence.

It is now settled law that where the allegations set out in the complaint or the chargesheet do not constitute any offence, it is competent to the high Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence.”

10.The learned counsel for the petitioner would rely on a judgment of the Hon’ble Supreme Court in the case of **State of Haryana and Others v. Bhajan Lal and others** reported in **1992 Supp (1) Supreme Court Cases 335**, wherein it is stated as follows:

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C., can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give exhaustive list of myriad kinds of cases wherein such power should be exercised:



WEB COPY

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific



Crl.O.P(MD).No.6297 of 2021

provision in *the Code* or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. On the side of the prosecution, it is stated that totally seven accused involved in the offence. Lorries that belonged to the petitioner company were seized with beach sand and that the Sub Collector and the Revenue Officials found A1 to A4 illegally transporting beach sand and the case was registered. The vehicles were seized with 25 tons of sea sand in kudankulam beach road. On the confession of the accused, the owner of the vehicle were impleaded in the case. The area in which the sand was excavated did not belong to the petitioner's company or leased to the petition's company. The place of occurrence is unsurveyed beach land. The statement of the Village Administrative Officer was co-related with the statement of the other officials. Eye witness are the Senior Deputy Tahsildar and the Sub Collector. The place of the occurrence is 100 m south of Survey No.595, which is an unsurveyed land. The sand was not taken from Survey No.595 and it was taken 100 meters away on the south side of Survey No.595. The respondents were competent to file the complaint.



CrI.O.P(MD).No.6297 of 2021

12.The learned counsel for the prosecution would rely upon a judgment of the Hon'ble Supreme Court in the case of ***State v. Sanjay etc*** reported in ***(2014) 9 Supreme Court Cases 772***, wherein it is stated as follows:

“A perusal of the aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law.

The report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agriculture land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures of water supply.”

13.The learned counsel for the prosecution would rely upon another judgment of the Hon'ble Supreme Court in the case of ***Central Bureau of***



CrI.O.P(MD).No.6297 of 2021

Investigation v. Aryan Singh etc reported in **2023 SCC Online SC 379**,

wherein it is stated as follows:

“As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under [Section 482](#) Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under [Section 482](#) Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”. ”

14.The occurrence consists of two incidents: two vehicles were seized along the beach road and two vehicles were seized in an unsurveyed land that was 100meteres south of S.No.595. A Tarus vehicle bearing registration No.TN-72-AW-5564 and another Tarus vehicle bearing registration



CrI.O.P(MD).No.6297 of 2021

No.TN-72-AT-4341 were seized by the respondents.

WEB COPY

15.A perusal of the records reveals that in the observation mahazer and in the rough sketch, the place of occurrence was mentioned as beach road. The initial allegation is that the driver of the said vehicles were not having valid transit permit.

16.On the side of the petitioner, it is stated that as per G.O.Ms.No.3026 Department of Industries, Labour and Housing dated 19.07.1966 and G.O.Ms.No.185 Industries (MMD2) Department, dated 19.07.1994, G.O.Ms.No.114, Industries (MMD2) Department, Mining Lease deed in favour of M/s.V.V.Minerals dated 05.05.1995, G.O.Ms.No.115, Industries (MMD2) Department, dated 06.05.1995 and the Supplement Lease Deed in favour of M/s.V.V.Minerals dated 13.12.2004. The petitioner is having the licence for carrying out mining activities in poramboke land and in the patta land.

17.In the complaint, it is stated that the vehicles were engaged in excavating sand in the government land. The place of the second occurrence that is where the sand was excavated was not specifically mentioned in the



Crl.O.P(MD).No.6297 of 2021

complaint. The place of occurrence as per the FIR and as per observation mahazer, is the beach road. Only in the statement of Village Administrative Officer, the place of second occurrence was mentioned as unsurveyed government land 100ft south of Survey 595. The place of excavation was not specifically mentioned in the complaint and in the observation mahazer.

18.In the complaint, it is stated that a vehicle bearing registration No.TN-72-AW-5564 that belong to SMV minerals and another vehicle bearing registration No.TN-72-AT-4341 that belong to IMC minerals were involved in excavating and transporting sand from the unsurveyed land. As per the case of prosecution, the petitioner was not mentioned as the owner or partner in SMV minerals or IMC minerals. The case of the petitioner is that he has retired from IMC minerals in the year 2011. Even as per the case of prosecution, the vehicles that involved in the excavating work and loading sand from the unsurveyed lands were not mentioned as the vehicles of the petitioner. Hence, the case under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act is not made out as against this petitioner.



Crl.O.P(MD).No.6297 of 2021

19.The two vehicles that belonged to the petitioner were waylaid by the

Revenue Officials only at the beach road and not in the place of excavation.

The vehicles that belong to the petitioner was not seized at the place of excavation and the vehicles were seized at the beach road, Karaichutuputhur village. It is seen that the licence was granted to carry out mining activities in Survey No.595 in Karaichutupudur village. It is seen that the petitioner is having valid permit to excavate sand and to transport the same from S.No.595 and other patta lands and in some poramboke land. Hence, the offence against the petitioner under Section 379 of IPC is not made out.

20.It is seen that the co-accused has filed a petition to quash the FIR in Crime No.83 of 2016 in Crl.O.P.(MD)No.6063 of 2017 and this Court in Crl.M.P.(MD)No.4081 of 2017 has stayed the proceedings on 17.05.2017. When the proceedings against the FIR was stayed by this Court, the prosecution has filed the chargesheet and the same was also taken on file as P.R.C.No.3 of 2021.

21.In view of the above facts and circumstances of the case and on considering the judgments cited by both parties, this Court is inclined to quash the proceedings in P.R.C.No.3 of 2021 against this petitioner. Accordingly,



WEB COPY



Crl.O.P(MD).No.6297 of 2021

R. THARANI,J.

Mrn

this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

01.06.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate, Radhapuram

2.The Inspector of Police,
Uvari Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD).No.6297 of 2021

01.06.2023