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CRL.OP.(MD)No.10969 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.10969 of 2022

and

CRL.MP.(MD).No.6930 of 2022

Murugan @ Omsrimurugan : Petitioner/Sole Accused

Vs.

1. State Rep. By

The Inspector of Police,
Checkanurani Police Station,
Madurai District.
(Cr.No.177 of 2022)

: Respondent/Complainant

2. Kavitha

: Respondent/*De facto Complainant*

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned FIR in Crime No.177 of 2022 on the file of the Respondent Police and quash the same.

For Petitioner

: Mr.S.Ram Sundar Vijayaraj

For Respondents

: Mr.B.Nambi Selvan

Additional Public Prosecutor for R1

: No Appearance for R2

ORDER



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This Criminal Original Petition has been filed to quash the FIR in Crime No.177 of 2022 on the file of the first Respondent Police.

2. The brief facts, which are relevant to decide the case, are as follows:

2.1.On 09.05.2022 at about 4 p.m., the De-facto Complainant/second Respondent in this Petition viz., Ms.Kavitha, Village Administrative Officer of K.Puliyangulam, Madurai District had made surprise visit based on secret information that illegal gravel sand quarrying was undertaken in the said Village in the Survey Nos.50/2, 50/3, 50/4, 50/5, 50/6, 50/7 by the Petitioner/Omsrimurugan, who was running the gravel quarry, even after the expiry of lease period 2019-2020 with TN 69 C 1095 (Tipper Lorry), one Hitachi, one JCB, and another tipper lorry bearing No.TN 63 AV 5888. Based on the Complaint of the second Respondent, the FIR had been registered in Cr.No.177 of 2022 by the first Respondent for the offences under Sections 379 IPC, 21 (5) of Mines and Minerals (Development & Regulation) Act, 1957.

3. The learned Counsel for the Petitioner submitted that the first



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Respondent had registered a case in Cr.No.177 of 2022 against the Petitioner, based on the Complaint of the second Respondent/*De facto Complainant*. The Petitioner had filed this Petition to quash the FIR in Cr.No.177 of 2022 for the alleged offences under Sections 379 IPC, 21 (5) of Mines and Minerals (Development & Regulation) Act, 1957 on the file of the first Respondent.

4. It is the submission of the learned Counsel for the Petitioner that the lease for the said Survey Numbers were given to one Sivamurugan in the year 2017. As per the FIR, the alleged date of occurrence is 09.05.2022 but the case was registered only on 14.05.2022. It was nothing but an afterthought. The allegations are vexatious. There were no Vehicles and the Petitioner was not present at the alleged time in the alleged place of the said Survey Numbers. The De-facto Complainant has preferred a Complaint before the first Respondent as though the Petitioner had carried out gravel sand illegally after the expiry of lease period. Therefore, the FIR is to be quashed as it is not bonafide. No unit of sand was recovered from the place of occurrence and delay had not been explained for registering the FIR. The Complaint of the second Respondent is without any material fact. The learned Counsel for the Petitioner submitted that vehicles belonging to



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the Petitioners were seized only on 13.06.2022 and photos were taken as though it was seized on the date of occurrence. There are lack of *bona fide* on the part of the De-facto Complainant. Therefore, the FIR is to be quashed. No notice was served on the Petitioner before seizure of the vehicle belonging to the Petitioner. Further, learned Counsel for the Petitioner submitted that the lease was granted to one Murugan @ Sivamurugan. The Respondent Police without application of mind, registered the case against Omsrimurugan. Therefore, the FIR is to be quashed.

5. The learned Counsel for the Petitioner also relied on the reported ruling of the Hon'ble Supreme Court in ***AIR 1992 SC 604*** in the case of ***State of Haryana Vs. Ch. Bhajan Lal***, with the malafide intention, if the FIR is registered, it is a valid ground to set aside the impugned FIR. Therefore, the learned Counsel for the Petitioner sought to quash the FIR in Cr.No.177 of 2022 pending on the file of the first Respondent.

6. It is the contention of the learned Counsel for the Petitioner that based on the report of the officials of the Department of Mines, the Tahsildar can file a Complaint as private Complaint under the Mines and



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Minerals Act before the notified Court under the Mines and Minerals Act and Rules i.e., learned Principal District and Sessions Judge, in the District concerned. Under the Mines and Minerals Act, the Police have no authority to register the case. While so, the Police had mechanically registered the case after getting Complaint from the Village Administrative Officer, K.Puliyangulam.

7. The learned Counsel for the Petitioner relied on the G.O.Ms.No.12, Industries MMCI, dated 02.02.2009, which reads as follows:

“No.II/IND/170/2009 – Under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) and in supersession of Industries Department Notification No. 319, published at Page 1 in part II – Section 2 of the Tamil Nadu Government Gazette Extraordinary, dated June 22, 1994 the Government of Tamil Nadu hereby authorises the District Forest Officers and the Police Personnel not below the rank of Inspector of Police to make complaint in writing to the Court of competent jurisdiction for any offence punishable under the said Act or any Rules made thereunder, in respect of cases falling within their jurisdiction.”

8. Only the Tahsildar has to prefer private Complaint before the Special Court i.e., the Principal District Judge of the District concerned. In this case, first Respondent has no power to investigate the case.

9. The learned Additional Public Prosecutor relied on the Order passed by this Court in Crl.R.C.No.254 of 2021 seeking to set aside the



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Order of dismissal in Crl.M.P.No.5302 of 2019 dated 08.03.2021 on the file of the learned Principal Sessions Judge, Villupuram District where the case pertains to the similar offence.

10. By way of rejoinder, the learned Counsel for the Petitioner has relied on the Order passed by this Court in Crl.O.P.No.534 of 2022 dated 19.07.2022, wherein the relevant paragraph is extracted hereunder:

“4. Be that as it may, proceeding against the person for any of the offence punishable under Section Mines and Minerals (Development and Regulation) Act, cognizance can be taken only on the basis of the complaint by the competent person as envisaged in the said Act”

11. Point for consideration:

Whether the FIR in Crime No.177 of 2022 on the file of the first Respondent is to be quashed?

12. On considering the rival submission, the contention of the learned Counsel for the Petitioner is found acceptable in the light of the Order passed by the learned Single Judge of this Court in Crl.O.P.No.534 of 2022 and the First Information Report is liable to be quashed. At the same time, the second Respondent shall file the report before the Tahsildar concerned.



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The Tahsildar concerned shall prefer private Complaint before the Special Court under the Mines and Minerals (Development and Regulation) Act.

13.The ruling cited by the learned Additional Public Prosecutor in Crl.R.C.No.254 of 2021, dated 11.11.2022 is not applicable to the facts of this case. The Petition in Crl.M.P.No.5302 of 2019 filed to discharge the Accused at the time of framing of charges was dismissed on 08.03.2021. Against which, Crl.R.C.No.254 of 2021 was filed. The learned Single Judge of this Court had observed that the High Court exercising Revision powers cannot look into the evidence as that of a trial Court. While framing of charges, prima facie alone is to be considered by the trial Court and not the evidence. Here, it is the Petitioner's case that the quarry licence is granted to one Siva Murugan whereas FIR has been registered against Omsrimurugan. Therefore, the Petitioner seeks to quash the FIR.

14. In the light of the above discussion, the point for consideration is answered in favour of the Petitioner and as against the Respondents. The FIR in Crime No.177 of 2022 on the file of the first Respondent is to be quashed.



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In the result, this ***Criminal Original Petition is allowed.*** The First

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Information Report in Crime No.177 of 2022 on the file of the first Respondent is hereby quashed and by granting liberty to the Prosecution to launch Prosecution against the Petitioner as per Mines and Minerals (Development and Regulation) Act and Rules, if there is a *bona fide* case. Consequently, connected Miscellaneous Petition is closed.

13.06.2023

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh



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To
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1. The Inspector of Police,
Checkanurani Police Station,
Madurai District.
2. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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13.06.2023