



Crl.O.P.(MD) No.11749 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD) No.11749 of 2021

and Crl.MP(MD)No.6012 of 2021

Vijayadhas

... Petitioner/Sole Accused

Vs

1. The Sub Inspector of Police,

Puthukadai Police Station,

Kanyakumari District (Crime No. 338 of 2021). ...Respondent/Complainant

2. Sree Kumar

... Respondent/

Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the FIR in Crime No. 338 of 2021 dated. 15.07.2021 on the file of the R1 for offences U/s. 379 of IPC and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 and quash the same.

For Petitioner : Mr. J.Pandi Durai

For Respondents : Mr.M.Sakthikumar (R1)

Government Advocate

ORDER

This Criminal Original Petition has been filed to quash the first information report in Crime No. 338 of 2021 on the file of the first respondent as illegal.

2. Based on the complaint given by the second respondent, the first respondent has registered a case in Cr.No.338 of 2021 under Sections 379 IPC and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957.



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3. According to the prosecution, on 15.07.2021 at 06.00 a.m., the defacto complainant was engaged in vehicle inspection at Puthukadai junction and at that time a Tempo Van, bearing registration No.TN 75 AF 8190 loaded with one unit of blue metal was found, without any valid transport permit. The person driving the vehicle ran away, after parking the same near the police Station. Since the details of the accused were not known, FIR was registered against unidentified person.

4. According to the petitioner the vehicle mentioned in the FIR belongs to the petitioner and he is owner cum driver of the vehicle. The entire prosecution case is false and the petitioner has not committed any offence. The respondent has incorrectly invoked the Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act'), since the mineral transported in the petitioner's vehicle is a minor mineral, which is exclusively governed by the Tamil Nadu Prevention of Illegal Mining Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 (hereinafter referred to as 'the Rules'). The petitioner was also given permit by the Additional Director of Geology and Mines under Rule 6 of the Rules. The alleged one unit of blue metal found in the petitioner's vehicle was bought from a stockyard belonging to



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M/s.Vasalakumari Blue Metals and was being transported to a hollow brick site in Natallam Vilavancode, after paying the necessary charges and no theft was involved in this case. Further, the petitioner had possessed valid transit pass in Form F issued by AD of Geology and Mining and the same was valid from 9th July to 19th July. Unfortunately, on 15.07.2021, due to urgency the petitioner was not carrying the transit pass with him. The respondent has no jurisdiction, as per Rule 10 of the said rules, the authorised person is the District Collector or the Revenue Divisional Officer. As per Rule 6(4) the Authorized Officer under section 21(4) of the act can demand production of transit pass and if not produced, the authorised officer can seize the material and handover the materials to the custody of the Tahsildar under Rule 8(2). The violation of said rule is punishable only by a fine of Rs.25,000/- and FIR cannot be registered for the offence under section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957. While so, the first respondent has registered a case against the petitioner and it is a clear abuse of process of law.

5.The learned counsel for the petitioner submitted that the vehicle mentioned in the FIR belongs to the petitioner and he is owner cum driver of the vehicle. The entire prosecution case is false and the petitioner has not committed any offence. The respondent has incorrectly invoked the Section 21(1) of the Act, since the



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mineral transported in the petitioner's vehicle is a minor mineral, which is exclusively governed by the Rules. The petitioner was also given permit by the Additional Director of Geology and Mines under Rule 6 of the Rules. The violation of said rule is punishable only by a fine of Rs.25,000/- by the District Collector or Revenue Divisional Officer and FIR cannot be registered for the offence under section 379 of IPC and section 21(1) of the Act. While so, the first respondent has registered a case against the petitioner and it is a clear abuse of process of law. Hence, prays to allow the petition.

6.The learned Additional Public Prosecutor appearing for the first respondent would contend that already FIR has been registered, investigated by the Police and filed the final report. As per the final report, *prima facie* materials are available against the petitioner. Hence, the petition is liable to be dismissed.

7.Heard both sides. Perused the materials available on record.

8.In this case, the admitted fact is that on the date of occurrence, the petitioner has transported one unit of small blue metal in the above said vehicle. The only contention is that the petitioner had valid transit pass in Form F issued by AD of



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Geology and Mining and it was valid from 9th July to 19th July and though the petitioner is having permit on the particular date from the Additional Director of Geology and Mines, but not having transit pass. For that, the said FIR has been registered. The respondents contention is that since the petitioner had not produced the valid transit pass the case was registered under section 379 of IPC and section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957.

9.Now, the question in this case is whether the Tamil Nadu Prevention of Illegal Mining Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 would apply or the Mines and Minerals (Development and Regulation) Act, 1957 would apply?.

10.The petitioner had permit and transit pass on the particular date, but not having trip sheet. On perusal of records it is observed the notifications under section 23(c) of the Mines and Minerals (Development and Regulation) Act 1957 in G.O.(MS).No.19, Industries (MMD.1), 25.1.2011 was issued by framing Rules viz., "The Tamilnadu Prevention of Illegal Mining Transportation and Storage of Minerals and Mineral Dealers Rules 2011". By invoking the said Rule No.6(1), Form No.F has been issued for the transit pass. The learned Additional Public Prosecutor



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also admitted that the petitioner had transit pass on the particular date, but failed to produce the trip sheet dated 15.07.2021 and therefore, it is a clear violation of Rule 6(1).

11.For better appreciation, the provisions of Tamilnadu Prevention of Illegal Mining Transportation and Storage of Minerals and Mineral Dealers Rules 2011" is extracted as hereunder:-

(i) Rule 3(1) :No person shall transport or cause to be transported any mineral by any carrier from the place of raising or from the place of stockyard or from one place to another place without having a valid transit pass.

(ii) Rule No.6(1): No person shall transport or otherwise remove or carry away any mineral from any place without obtaining a transit pass from the Deputy Director, Person desiring such passes should file an application before the Deputy Director in Form "F" duly specifying all the particulars prescribed therein.

Therefore from reading Rule 3, it is clear that no person shall transport any mineral without having a valid transit pass. As per Rule 6(1), the transit pass should be obtained from Deputy Director in Form No. F and as per rule 6(4), any person who transports the minerals and who is required to carry transit shall produce pass on demand to the authorized officer or any officer or authority who has been empowered under section 21(4) of the Act.



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12. Further under Rule 10, penalties also provided as under:

10(1) Any person who contravenes any of the provisions of the rules, sells or stores minerals except under and in accordance with the Registration certificate of Registrar or who transports the minerals not in accordance with transport permit issued shall be punishable with a penalty upto a maximum of Rs.25,000/- by an order of the District Collector concerned.

10(2) Any person who transports/stores mineral and takes minerals to a place except to the destination specified in the Transport permit, shall be punishable with the imprisonment for one year or with fine which may be extended upto Rs.25,000/- or with both, if the District Collector or Revenue Divisional Officer concerned within the respective jurisdiction files FIR and tries the case in a competent Court of Law in the District.

Therefore, in Rule 10, penalties provided for the controversies of the provisions of the rules. The present case also the petitioner had transit pass from 09.07.201 to 19.7.2021 and the date of transport is 15.7.2021. The transit pass also issued in form F under rule 6(1) of Rules. Hence the rules 2011 only applicable.

13. In this context the AD of Geology and Mines issued a letter to Sub-Inspector of police stating that the officer had issued transit pass from 09.07.2021 to 19.07.2021, but the trip sheet date mentioned as 14.7.2021 at 9.00 a.m., and the



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vehicle was seized on 15.7.2021 and thereby, the said trip sheet is not valid.

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Therefore, it is clear that the petitioner had valid transit pass on the date of occurrence but trip sheet was not for the particular day and it was previous day i.e., trip sheet dated 14.7.2021 and vehicle was seized on 15.7.2021.

14. Even according to the prosecution, the alleged said violation comes under the provisions of Rules 2011 and thereby, Rule 10(1) of the Rules has to be invoked. As per rule 10(1) of the Rules, punishment of fine Rs.25,000/- can be imposed only by the District Collector. If there is any violation of Rule 10(1) of the Rules, then the competent authority i.e., the District Collector can only impose a fine of Rs.25,000/- for the alleged violation. As per rule 10(2), District Collector or Revenue Divisional Officer concerned within the jurisdiction have to approach the competent Court to take cognizance of the offence under section 21(1) and FIR to be filed under section 21(6) of the Act. Without invoking the relevant rules the Police Officer has registered a criminal case under section 379 of IPC and section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 and investigated the case and filed final report and the same is not in accordance with law. It is well settled law that even though the first respondent registered FIR and investigated the case and also filed final report, the Court can still pass orders based on the available records to prevent the abuse of process of Court and to meet the ends of Justice. Therefore, in view of



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the above discussions, the FIR in Cr.No.338 of 2021 on the file of the first respondent and **(*)SPL.S.C.No.197 of 2023** on the file of Principal District and Sessions Judge, Kanyakumari District is liable to be quashed.

15.Accordingly, this Criminal Original Petition is allowed, thereby, the FIR in Cr.No.338 of 2021 on the file of the first respondent and **(*)SPL.S.C.No.197 of 2023** pending on the file of Principal District and Sessions Judge, Kanyakumari District are hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

(*)Corrected as per the order of this Court dated 05/03/2024 made in CRI OP(MD)No.11749 of 2021

Sd/-

Assistant Registrar (CS II)

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/ /2023

Sub Assistant Registrar(CS)

PNM

To

(*)To be substituted the order which already despatched on 19/12/2023

1.The Principal District and Sessions Judge,
Kanyakumari District



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2. The Sub Inspector of Police,
Puthukadai Police Station,
Kanyakumari District (Crime No. 338 of 2021).

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

+1 CC to M/s.J.PANDI DORAI, Advocate (SR-45767[F] dated 04/10/2023)

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KB(11.12.2023) 10P 5C

MGJ(14/03/2024) 10P 5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.