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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 26/06/2023

Date of Pronouncement : 14/07/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.14793 of 2022

and

Crl.MP(MD)Nos.9627 and 9628 of 2022

Mariyappan : Petitioner/A2

Vs.

1.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.
(Crime No.585 of 2021)

2.Chandrasekaran,
Special Revenue Tahsildar,
Geography and Mining,
Tirunelveli District. : Respondents

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the impugned proceedings in CC No.1564 of 2022 on the file of the Judicial Magistrate Court No.1, Tirunelveli and quash the same as illegal against the petitioner and pass such other or other orders.



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For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.S.Manikandan
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.1564 of 2022 on the file of the Judicial Magistrate No.1, Tirunelveli.

2.The facts in brief:-

On 28/08/2021 at about 07.45 am, A1 without proper transit pass, A1 transported 8 units of M-Sand by lorry bearing registration No.TN-96-4542. The above said transport was made illegally with the connivance of A2, who is the quarry licensee. The above said complaint was lodged by the de-facto complainant stating that on 28/08/2021 at about 07.45 am, when they were on routine patrolling duty, near KTC Nagar Bus Stop, Palayamkottai the accused persons found driving the lorry bearing registration No.TN-96-4542 with M-sand, without proper permission. On the basis of the above said occurrence, a case in Crime No.585 of 2021. After completing the investigation, final report was filed charging the



petitioner for the offence under section 379 IPC and it was taken cognizance by the Judicial Magistrate No.1, Tirunelveli, in CC No.1564 of 2022.

3.Now seeking quashment of the same, A2 namely Mariyappan has filed this petition on the ground that even though, he is the owner of the quarry, no material has been collected during the course of investigation to show that only with his connivance, the above said illegal act was committed by A1.

4.Heard both sides.

5.When matter was called, the petitioner produced the transit pass issued by the competent authority, wherein we find that the transport permit was granted between 27/02/2018 and 26/02/2023. It was issued to one K.Raju, the owner of M/s.K.R. Blue Metals, No.1675/1A, 1676/1A, Pappankulam Road, Gangaikondan. It was issued to carry or transport six cubic meter mentioning the Lorry No.TN-96-4542. The transit pass was issued on 28/08/2021 and time is mentioned as 06.50 am.



6.The learned Additional Public Prosecutor was required to verify the genuineness of the transit pass.

7.The CD file is also called and perused.

8.Perusal of the CD file, it does not indicate the collection of transport pass. But during the course of investigation, the lease agreement that was entered into between the owner namely Raju and Mariyappan, who is the petitioner here has been collected, wherein it has been stated that the above said Lorry No.TN-96-4542 belongs to Raju and it was leased out to this petitioner for 11 months that is from 16/02/2021 to 15/01/2022 on lease basis. The lease amount was also agreed as Rs.2,00,000/-. So, it is seen that even though, quarry permit was granted in favour of Raju-A1, lorry was leased out to this petitioner for transporting M-sand, wherein, we find the vehicle number. So, permit is also available though in the name of Raju, who is the quarry owner. If there is any violation of the permit issued in the name of the above said Raju, the competent authority ought to have proceeded against the above said Raju only. There is no question of theft here. No material has been collected



during the course of investigation that the M-sand was stolen from the quarry belonging to Raju and illegally transported.

9.Except the statement of A1, no other effort has been made by the respondents herein to collect the materials to indicate the above said commission of theft. Absolutely, this is not the case of theft and it is only violation of permit.

10.When, we read the transport pass, it is stated the date of despatch as 23/08/2021 at 6.50 am. The destination is mentioned as Madakulam and the name of the vehicle driver is also mentioned as Thangapandi. So, I find that it is not transported without permit or transit pass.

11.As mentioned above, there is a violation of permit only, for which, the owner of the above said quarry ought to have been proceeded and not this petitioner. On that sole ground, the criminal proceedings against the petitioner is liable to be quashed.



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12.In the result, this criminal original petition is **allowed**. The case in CC No.1564 of 2022 on the file of the Judicial Magistrate No.1, Tirunelveli, is herein quashed against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

14/07/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate Court No.1,
Tirunelveli.
- 2.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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14.07.2023