



Crl.O.P.(MD)No.14561 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.09.2023
Delivered on	29.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.14561 of 2023
and Crl.M.P.(MD) Nos.11485 and 11486 of 2023

Gnanapoominathan @ Gnanaboominathan

... Petitioner/
Accused 2

Vs.

1. The Inspector of Police,
Ettaiyapuram Police Station,
Tuticorin District.
(Crime No.313 of 2021)

... 1st Respondent/
Complainant

2. The Inspector of Police,
Ettaiyapuram Police Station,
Tuticorin District.

... 2nd Respondent /
Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records relating to the Charge sheet in C.C.No.238 of 2023 on the file of learned Judicial Magistrate No.II, Kovilpatti and quash the same.

For Petitioners : Mr.M.Subash Babu
for M/s.Subash Law Office



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For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This petition is filed seeking quashment of C.C.No.238 of 2023 pending on the file of learned Judicial Magistrate No.II, Kovilpatti registered against the petitioner/A2 and accused No.1 for the offences under Sections 379 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957.

2. The facts and brief as gathered from the record are that on 20.03.2021 at about 11.40 a.m., the defacto complainant who is the police officer went to the quarry run by the petitioner/A2 found a Tipper Lorry bearing registration No.TN-78-Z-2261 coming out of the quarry. The said lorry was stopped by the police and on search, they found that the said lorry was loaded with three units of gravel sand and that there was no permit and the defacto complainant went inside the quarry and found that there was no other person. The police have inquired the driver/A1 of the said vehicle and he has given the name of the petitioner/accused No.2



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thereby a case has been registered in respect of the said incident on 20.03.2021 in Crime No.99 of 2021 for the offences under Sections 379 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, against not only accused No.1 but also the petitioner herein and on completion of investigation, charge sheet is filed in C.C.No.238 of 2023 and the same is challenged before this Court.

3. It is submitted by learned counsel for the petitioner/A2 that the petitioner has running the quarry by obtaining valid permission and he has got a permit also given by the competent authority to transport this minerals and thereby his implication into the case as accused No.2 has to be quashed.

4. Learned Additional Public Prosecutor submits that the petitioner /A2 has got a permit only to transport the granite but not the gravel and therefore, sought for dismissal of this petition.

5. Heard both sides and perused the record.



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6. The petitioner has filed proceedings of the District Collector, Tuticorin in R.C.No.G.M.255/G&M/2018 dated 07.05.2020 which go to show that the petitioner/A2 is permitted quarry in his patta land in Survey Nos.178/3A, 178/3B, 178/4A, 178/4B and 178/4C admeasuring to an extent of 2.11.5 hectares at Meenatchipuram Village, Ettaiyapuram Taluk, Tuticorin District for a period of five years.

7. Learned Additional Public Prosecutor contended that the petitioner/A2 is having permit only to take the rough stone from his patta land. The licence which is filed before this Court would go to show that he is also given permission to take gravel from his patta land. There is no dispute that the gravel was being taken from the land belonging to the petitioner in fact, the second respondent/defacto complainant has stopped the vehicle while it was coming out of the quarry and has also went inside the quarry which is the patta land belonging to the petitioner and found there was no person. Therefore, on perusal of the patta, the petitioner/A2 is permitted to go ahead with quarry activities in his patta land not only to take rough stone but also the gravel. According to the respondent police, accused No.1 was transported the gravel from the



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patta land of the petitioner/A2, therefore, once the gravel is being transported by A1 from the patta land of the petitioner/A2 basing on the proceedings of the District Collector which is in force on the date of the alleged incident the police should not have registered any case against the petitioner/A2.

8. Further, even otherwise, the petitioner/A2 was admittedly not present in the scene of occurrence, it is accused No.1 who was found along with three units of gravel loaded in Tipper Lorry bearing registration No.TN-78-Z-2261. When the petitioner/A2 is not at all present in the scene of occurrence and even if the act of accused No.1 in taking the graven in the tipper lorry amounts to offence, even then the petitioner/A2 cannot be connected to it. There is no record to show that the confessional statement has been recorded from the petitioner/A2.

9. Apart from the offence under Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, the petitioner/A2 has also charged under Section 379 of IPC. It is the case of the prosecution that on 20.03.2021 at about 11.40 a.m., the petitioner was committed



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theft of gravel in tipper lorry bearing registration No.TN-78-Z-2261.

However, as per the District Collector proceedings, the petitioner is the owner of the land bearing Survey Nos.178/3A, 178/3B, 178/4A, 178/4B and 178/4C admeasuring to an extent of 2.11.5 hectares at Meenatchipuram Village and that he was permitted to carry out the quarry work in respect of not only rough stone but also gravel. The vehicle which is alleged to have used is belong to the petitioner/A2 and when petitioner/A2 is permitted to quarry the gravel in its own land, unfortunately the petitioner was slapped with the case as if he has committed theft of gravel from his own land. Therefore, the offence under Section 379 of IPC will not sustain.

10. In the result, this criminal original petition is allowed and the proceedings in C.C.No.238 of 2023 on the file of learned Judicial Magistrate No.II, Kovilpatti, are hereby quashed. Consequently, the connected miscellaneous petitions are closed.

29.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police,
Ettaiyapuram Police Station,
Tuticorin District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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Dated: 29.09.2023