



CrI.O.P.(MD)No.15668 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/12/2023

**CORAM**

The Hon'ble Mr.Justice **G.ILANGO VAN**

**CrI.OP (MD)No.15668 of 2022**

**and**

**CrI.MP (MD)Nos.12449 and 12450 of 2023**

1.Subburaj @ Alex

2.Muthusamy : Petitioners/A1 and A2

Vs.

1.The State rep. by  
The Inspector of Police,  
Vachakarupatti Police Station,  
Virudhunagar District.  
(Crime No.100 of 2021) : R1/Complainant

2.Kanagaraj,  
Sub-Inspector of Police,  
Vachakarapatti Police Station,  
Virudhunagar District. : R2/De-facto  
Complainant

**PRAYER:-**Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.461 of 2023 on the file of the Judicial Magistrate No.1, Virudhunagar and quash the same and pass such further or other orders.

For Petitioners : Mr.T.Lenin Kumar

For 1<sup>st</sup> Respondent : Mr.M.Sakthi Kumar  
Government Advocate  
(Criminal side)

For 2<sup>nd</sup> Respondent : No Appearance



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**O R D E R**

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This criminal original petition has been filed seeking quashment of the case in CC No.461 of 2023 on the file of the Judicial Magistrate No.1, Virudhunagar.

**2.The case of the prosecution in brief:-**

The de-facto complainant namely the Sub Inspector of Police, attached to Vachakarapatti Police Station, Virudhunagar District, filed a complaint stating that on 15/06/2021 at about 09.15 pm along with the police personnel went on their routine duty to prevent the illegal sand mining, after receiving the secret information. At that time, the accused persons were found loading the sand illegally near Arjuna river bed. They went to that spot. On seeing the police party, they tried to escape. Thereafter they were apprehended. The first person disclosed his name as 'Subburaj'. He disclosed that he is owning JCB vehicle and the trailer and admitted that he used the above said vehicle to commit sand mining offence frequently. On that account, they made a search and found 1/4 unit of river sand. Another person by name Muthusamy was also present. He disclosed that he is watching the movement of others, when the illegal sand mining is going on. They were arrested along with the property. Upon which, a case in Crime No.100



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of 2021 was registered for the offences under section 379 IPC and section 21(5) of the Mines and Minerals (Development & Regulation) Act, 1957. After completing the investigation, final report has been filed and it was taken cognizance in CC No.461 of 2023 by the Judicial Magistrate No.I, Virudhunagar.

3. Seeking quashment of the same, this petition is filed by the petitioner questioning the jurisdiction of the police to make the investigation under section 21(v) of the Mines and Minerals (Development & Regulation) Act, 1957. They would also rely upon the GO.Ms. No.12, Industries MMC1, dated 02/02/2009.

4. Heard both sides.

5. A simple question is involved in this matter.

6. Registration of FIR on the basis of the complaint given by the Sub-Inspector of Police cannot be found fault in view of the judgment of the Hon'ble Supreme Court reported in the case of **Pradeep S.Wodeyar Vs. State of Karnataka (MANU/SC/1158/2021)**. A detailed discussion was made by the Hon'ble Supreme Court in that judgment, touching upon each and every aspect of the issue by relying upon the earlier judgments. It is stated in that



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judgment that registration of the FIR, by the Station House Officer for the offence under section 21 of the MMDR Act is not barred. The bar will apply only when the Judicial Magistrate takes cognizance. Regarding taking cognizance for the offence punishable under IPC, there is no bar for the Magistrate to take cognizance without waiting the complaint from the Authorised Officer in respect of the offence punishable under MMDR Act. So the very registration of the FIR by the respondent herein cannot be found fault. But the problem lies in taking cognizance by the Magistrate under section 379 IPC and section 21(2) of MMDR Act.

7.No doubt that the Judicial Magistrate is well within its power can take cognizance of the offence under section 379 IPC, since it has been now clarified that both the offences are distinct in nature and not overlapping. So far the power of the Special Court is concerned, it has been held that there is no bar for the Special Court to conduct joint trial for the offence under MMDR Act and other offences.

8.In view of the **Pradeep S Wodeyar**'s case, as clarified by the Full Bench of this court reported in **S.Kumar Vs. District Collector, Kokkirakulam, Tirunelveli**



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**District and 7 others [2023(4)CTC 113]**, there shall be a direction to the trial court to follow the procedures contemplated or prescribed. So the contention on the part of the petitioner that the entire proceedings should be quashed cannot be accepted in view of the statement of law.

9.In view of the above said, this criminal original petition stands **dismissed**, of course with a direction to the concerned trial court as indicated above. But however, the personal appearance of the petitioners before the concerned trial Court is dispensed with on condition that the petitioners shall appear before the learned Judicial Magistrate No.1, Virudhunagar within a period of 15 days from the date of receipt of a copy of this order and file an undertaking affidavit, by affixing their recent passport size photograph to the effect that they will appear before the trial Court as and when required and must ensure their proper representation through Advocate. Accordingly, CrI.MP(MD)No.12450 of 2023 is allowed. Consequently, connected CrI.MP(MD)No.12449 of 2023 is closed.

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

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



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G.ILANGOVAN, J

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