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Crl.O.P.(MD)No.17036 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/10/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP (MD)No.17036 of 2023

and

Crl.MP (MD)No.13529 of 2023

1.Alexraj
2.Vigneshwaran
3.Velusamy
4.Subash
5.Stephen Ambrose @
Stephen Anburose : Petitioners/A1 to A5

Vs.

1.The Inspector of Police,
Vaiyampatti Police Station,
Vaiyampatti, Trichy District.
(Crime No.09 of 2021) : R1/Complainant

2.Meganathan,
Village Administrative Officer,
No.32, Chettiyapatti Village,
Manapparai Taluk,
Trichi 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 pertaining to the First Information Report in Crime No.09 of 2022 on the file of the 1st respondent Police and to quash the same as illegal as against the petitioner/Accused and pass such further or other orders.

For Petitioners : Mr.K.Arunraj

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



Crl.O.P.(MD)No.17036 of 2023

O R D E R

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2.The case of the prosecution in brief:-

The de-facto complainant is the Village Administrative Officer of Chettiyapatti Village. He received a secret information that in Chettiyapatti village, unlawful sand mining activities are going on. The above said information was received at 07.30 am, on 06/01/2021. Along with the Village Assistant, he made spot inspection. At that time, he found the accused taking the sand in the land situated in Survey No.464/13 in patta No.2050 through JCB vehicle. On enquiry, they disclosed that one of the joint pattadars grand son namely Stephen was constructing a house. They are taking the sand through the JCB. Finding that no proper permission was obtained by the accused for taking of sand, he lodged a complaint. Based upon which, a case in Crime No.9 of 2022 was registered for the offences under section 379 IPC and section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957.



3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that Stephen Ambrose, who is the 5th petitioner herein after obtaining proper permission and plan approval for constructing a house in Survey No.272/6A and 272/6C from the village panchayat has taken the sand. The approval is dated 31/12/2021. The patta No.2050 is also produced.

4. Heard both sides.

5. The patta No.2050 for Survey No.464/13 is produced. Wherein, we find that it is standing in the name of six persons, one among them is the 5th petitioner's grand father. It is not disputed by the prosecution that sand was taken from the patta land.

6. It is seen that for putting up construction of the house only, sand was taken in the own patta land. So *prima facie* the offence under section 379 IPC may not be attracted.

7. So far as the offence under section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 is concerned, Rule 17 of the Tamil Nadu Minor Mineral Concession Rules, 1958 permits the owner of the patta land to take the sand for domestic purpose.



CrI.O.P.(MD)No.17036 of 2023

8.Rule 17 of the Tamil Minor Minerals Concession

Rules, 1959, reads as under:-

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"17.Quarrying by the owner.-A
registered holder may quarry free of charge any minor mineral on a small scale for his own use for a specific boan fide, domestic or agricultural purpose, provided that he has no intention of continuing quarrying operations indefinitely and provided further that the land is not in any way rendered less fit for cultivation then before."

9.It is not even the case of the prosecution that sand was taken for commercial purpose. By virtue of Rule 17 of the Tamil Nadu Minor Mineral Concession Rules, 1959, the prosecution itself is bad in law. On that sole ground, the entire prosecution is liable to be quashed.

10.In the result, this criminal original petition stands **allowed**. The FIR in Crime No.9 of 2022 on the file of the 1st respondent is quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

17/10/2023

Index:Yes/No
Internet:Yes/No

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Crl.O.P.(MD)No.17036 of 2023

To,

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- 1.The Inspector of Police,
Vaiyampatti Police Station,
Trichy.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD)No.17036 of 2023

G.ILANGOVAN, J

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