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CRL.OP.(MD)No.19237 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.19237 of 2022

and

CRL.MP.(MD).No.12989 of 2022

Prasath

: Petitioner/Sole Accused

Vs.

State Rep. By

1. The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.

(Crime No.411 of 2022).

: 1st Respondent/Complainant

2. Mr.Muthu

Assistant Geologist,
Geography and Mining Department,
Thanjavur.

: 2nd Respondent/
De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.411 of 2022 on the file of the 1st Respondent and quash the same.

For Petitioner

: Mr.S.Vinayak



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For Respondents

: Mr.B.Nambi Selvan

Additional Public Prosecutor for R1

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.411 of 2022 on the file of the 1st Respondent.

2. The brief facts, which are relevant to decide this petition, are as follows:

2.1. The Petitioner was carrying M-sand with proper documents. GST Bill dated 20.07.2022 issued from Param Enterprises Limited, Perambalur, invoice No. TP2223-05764 and Vehicle No. TN 19 AW 3184 before the second Respondent and the same was refused by him. During the vehicle check up by the Officers of the Mines and Minerals Department and Revenue Officials, the Petitioner had furnished those documents which was refused by them, instead on the basis of the Complaint from the Assistant Geologist viz., Muthu, Geology and Mining Department, Thanjavur, the case was registered in Cr.No.411 of 2022 on the file of the first Respondent.



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WEB COPY 2.2.As per G.O.Ms.No.19, Industries (MMD.1) Department, dated 25.01.2011, the Mines and Minerals (Development and Regulation) Rules were notified. The Perambalur District Crusher Owners Association through Secretary filed W.P.No.7929 of 2012 challenging the Order passed by Government of Tamil Nadu in G.O.Ms.No.19 Industries (MMD.1) Department, dated 25.01.2011 that the above G.O was stayed by this Court in W.M.P.No.2 of 2012 in W.P.No.7929 of 2012 dated 26.03.2012, till date the Stay continues. Still the Respondents 1 and 2 had registered the case. Therefore, the Petitioner had approached this Court seeking to quash the FIR in Crime No.411 of 2022 on the file of the first Respondent.

3. The learned Counsel for the Petitioner submitted that the Police Officer does not have the power to register the case under the Mines and Minerals (Development and Regulation) Act. The learned Counsel for the Petitioner also relied on the Order passed by this Court in Crl.O.P.(MD).No. 15797 of 2022, dated 26.10.2022, which is similar to the facts of this case.

4. It is the contention of the learned Counsel for the Petitioner that based on the report of the Police, the Tahsildar can file a Complaint as



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private Complaint under the Mines and Minerals Act before the notified Court under the Mines and Minerals Act and Rules i.e., learned Principal District and Sessions Judge concerned. Under the Mines and Minerals Act, the Police have no authority to register the case. While so, in the present case, mechanically the Police registering the case after getting Complaint from the Mines and Minerals Department.

5. The learned Counsel for the Petitioner relied on the G.O.Ms.No.12, Industries MMCI, dated 02.02.2009, which reads as follows:

“No.II/IND/170/2009 – Under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) and in supersession of Industries Department Notification No. 319, published at Page 1 in part II – Section 2 of the Tamil Nadu Government Gazette Extraordinary, dated June 22, 1994 the Government of Tamil Nadu hereby authorises the District Forest Officers and the Police Personnel not below the rank of Inspector of Police to make complaint in writing to the Court of competent jurisdiction for any offence punishable under the said Act or any Rules made thereunder, in respect of cases falling within their jurisdiction.”

6. Only the Tahsildar has to prefer private Complaint before the Special Court i.e., the Principal District Judge of the District concerned. In this case, first Respondent has no power to investigate the case.

7. The learned Additional Public Prosecutor objected to the line of the argument of the learned Counsel for the Petitioner stating that as per the Mines and Minerals (Development and Regulation) Act alone, the Tahsildar



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has power, at the same time, it is a case under Section 379 of IPC, for which the first Respondent has power to investigate the case. Therefore, he seeks to dismiss this Petition as it is not maintainable.

8. By way of rejoinder, the learned Counsel for the Petitioner has relied on the Order passed by this Court in CrI.O.P.No.534 of 2022 dated 19.07.2022, wherein the relevant paragraph is extracted hereunder:

“4. Be that as it may, proceeding against the person for any of the offence punishable under Section Mines and Minerals (Development and Regulation) Act, cognizance can be taken only on the basis of the complaint by the competent person as envisaged in the said Act”

9. On considering the rival submission, the contention of the learned Counsel for the Petitioner is found acceptable in the light of the Order passed by the learned Single Judge of this Court and the First Information Report is liable to be quashed. At the same time, the second Respondent shall file the report before the Tahsildar concerned. The Tahsildar concerned shall prefer private Complaint before the Special Court under the Mines and Minerals (Development and Regulation) Act.

10. In the light of the above discussion, this Criminal Original Petition stands allowed and the First Information Report in Crime No.411



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of 2022 on the file of the first Respondent is hereby quashed and by granting liberty to the Prosecution to launch Prosecution against the Petitioner based on the report of the Assistant Geologist, Geology and Mining Department or Revenue Officials concerned or any other authority under Mines and Minerals (Development and Regulation) Act, as per order in Crl.O.P.No.534 of 2022.

In the result, this ***Criminal Original Petition is allowed.***
Consequently, connected Miscellaneous Petition is closed.

13.06.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

dh

To

1. The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.
2. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

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13.06.2023