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Crl.O.P.(MD)No.20776 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD)No.20776 of 2023

Tamilneethi

... Petitioner/1st Accused

Vs.

The Inspector of Police,
Naducavery Police Station,
Thanjavur District.
(In Crime No.149 of 2021)

... Respondent/Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the respondent to file the final report in Crime No.149 of 2021 on the file of the respondent Police Station within a time frame fixed by this Court.

For Petitioner : Mr.S.ManojKumar

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition is filed to direct the respondent to file the final report in Crime No.149 of 2021 on the file of the respondent Police Station within a time frame fixed by this Court.



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2.The facts in brief:

On the basis of the complaint given by one Arokiyaraj, who is the Inspector of Police, Nadukaveri Police Station, a case in crime No. 149 of 2021 was registered against the petitioner for the offences punishable under Sections 379 IPC and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, on 19.05.2021, stating that on 19.05.2021 at about 5.00 a.m., the defacto complainant along with his Police team were doing routing patrolling duty and watching illegal sand mining offences. At that time, they intercepted a lorry bearing registration No.TN 49 BT 3075 and on search, the petitioner was found in illegal possession of 1/2 units of river sand. When the defacto complainant made enquiry with the Driver of said lorry, he revealed his name as Tamilneethi. Thereafter, he was arrested along with the vehicle and the sand and the case was registered.

3.Now, seeking direction to the respondent herein to file the Final Report, this petition has been filed, stating that even after lapse of two years, no Final Report is filed. Apart from that nothing is stated in the petition.



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4.The Hon'ble Supreme Court issued guidelines in the case of ***Pradeep S.Wodeyar Vs. State of Karnataka (MANU/SC/1158/2021)*** in respect of the offence of illegal sand mining. It is stated in that judgment that registration of the FIR, by the Station House Officer for the offence under section 21 of the MMDR Act is not barred. Further, in respect of the investigation and trial, guidelines issued in that judgment are read as under;

“85. In view of the discussion above, we summarise our findings below:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the [MMDR Act](#) without the case being committed to it by the Magistrate under [Section 209](#) CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. [Section 465](#) CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of [Section 465](#) CrPC;



(iii) *The decision in [Gangula Ashok](#) (supra) was distinguished in [Rattiram](#) (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to [Section 465\(2\)](#) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides [Section 465\(2\)](#) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others;*

(iv) *In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;*

(v) *It is a settled principle of law that cognizance is taken of the offence and not the*



offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no failure of justice' under [Section 465](#) CrPC is proved. This irregularity would thus not vitiate the proceedings in view of [Section 465](#) CrPC;

(vi) The Special Court has the power to take cognizance of offences under [MMDR Act](#) and conduct a joint trial with other offences if permissible under [Section 220](#) CrPC. There is no express provision in the [MMDR Act](#) which indicates that [Section 220](#) CrPC does not apply to proceedings under the [MMDR Act](#);

(vii) [Section 30B](#) of the [MMDR Act](#) does not impliedly repeal [Section 220](#) CrPC.

Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;



(ix) *A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and*

(x) *The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a prima facie case against A-1, which is sufficient to arraign him as an accused at this stage.”*

5.The respondent is directed to follow the guidelines issued by the **Hon'ble Supreme Court** as mentioned above and as clarified by the **Hon'ble Full Bench of this Court in the case of S.Kumar Vs. The District Collector, Kokkirakulam, Tirunelveli District and others in W.P(MD) No.14341 of 2022, dated 13.06.2023.**



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6. With the above said direction, this Criminal Original Petition is disposed of.

20.11.2023

Index : Yes/No

Internet : Yes/No

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To

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



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G.ILANGOVAN. J.

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