



Crl.O.P.(MD)No.627 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2024

CORAM

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CRL.OP.(MD)No.627 of 2023

and

CRL.MP.(MD)No.573 of 2023

Kannan

... Petitioner

Vs.

1.State Rep. by,
The Inspector of Police,
Checkanurani Police Station,
Madurai District.
(In Crime No.430 of 2021)

2.Kaleeswari

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in P.R.C.No.38 of 2022 on the file of the Judicial Magistrate No.II, Usilampatti and quash the same in respect of the petitioner concerned.



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Crl.O.P.(MD)No.627 of 2023

For Petitioner : Mr.N.Balasubramanian

For Respondent No.1 : Mrs.M.Aasha

Government Advocate [Crl. Side]

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 of Cr.P.C., to call for the records pertaining to P.R.C.No.38 of 2022, on the file of the Judicial Magistrate No.II, Usilampatti and to quash the same.

2.The allegation against the petitioner is that the petitioner is the first accused, who is alleged to have transported rough damaged stones / rough pieces or stones take after demolishing a building to his brick manufacturing unit in a tractor belonging to the second accused, without getting any authorization from the Government, thereby an FIR came to be registered on the basis of the complaint given by the Village Administrative Officer in Cr.No. 430 of 2021 under Section 379 of IPC r/w. Section 21(5) of “the Mines & Minerals (Development & Regulation) Act, 1957” [hereinafter “the Act” for brevity].



Crl.O.P.(MD)No.627 of 2023

WEB COPY

3.The respondent police conducted investigation and filed a final report against two persons and cognizance was taken by the Judicial Magistrate II, Usilampatti and the same is pending trial.

4.Aggrieved over the issuance of process against the petitioner, he has come forward with this petition to quash the charge sheet in P.R.C.No.38 of 2022, on the ground that no offence is made out against the petitioner and he has only transported the materials which were taken after demolishing the old building from his own premises to his brick unit for recycling. Learned Counsel for the petitioner contended that there was no theft of minerals and there was no mining activity illegally carried out by the petitioner. Hence, the registration of FIR and final report *per se* is illegal and prays for quashing of the said charge sheet.

5.Learned Government Advocate [Crl. Side] would submit that the petitioner was found transporting rough damaged stones near his brick unit and since he was not having any authorisation or transit permit, a case has been registered and the witnesses have also stated about his involvement in transporting the said rough stones.



Crl.O.P.(MD)No.627 of 2023

WEB COPY

6.I have carefully considered the submissions made by the learned Counsel on either side and perused the materials available on record.

7.The petitioner has been charged under Section 379 of IPC and Section 21(5) of the Act. Sections 378 & 379 of IPC reads as follows:

***“378. Theft.**—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*

***379. Punishment for theft.**—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

8.As per Section 379, for punishing a person, there must be a theft committed by the person as defined under Section 378 of IPC.



Crl.O.P.(MD)No.627 of 2023

WEB COPY

9.In this case, the police have not investigated regarding the place from where these rough stones were taken. According to the petitioner, these stones were taken from one of the petitioner's premises to his own brick manufacturing unit for the purpose of recycling. In the absence of any proof to show that the petitioner has taken away these stones which belongs to any person or from government land, the petitioner cannot be charged for theft of property. Even in the complaint, it is only stated that the petitioner has transported the damaged stones taken from a demolished building without due authorisation. These construction materials could not be considered as one of the minerals listed out under the Act, which requires prior permission to transport.

10.Admittedly, these stones were not mined from any of the lands. According to the petitioner these stones were carried from one of his own properties after demolishing an existing building and transported the same to another unit. Section 21(5) of the Act reads as follows:

“Section 21. Penalties:

21(1).

21(2).



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Crl.O.P.(MD)No.627 of 2023

21(3).

21(4).

21(5). Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

11. To attract Section 21(5) of the Act, the person must have without any lawful authority raised any mineral from any land. The definition of "minerals" and "mining operations" given under Sections 3(a) & 3(d) of the Act reads as follows:

"3. Definitions.- In this Act, unless the context otherwise requires:-

(a) "minerals" includes all minerals except mineral oils;

(b)

(c)

(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;"



Crl.O.P.(MD)No.627 of 2023

WEB COPY

12.In this case, admittedly, these damaged construction materials would not fall within the definition of “minerals” and this Court is of the view that without properly investigating the nature of the property transported in the tractor, final report has been filed against the petitioner and there is no offence made out against the petitioner.

13.Accordingly, the P.R.C.No.38 of 2022, on the file of the Judicial Magistrate No.II, Usilampatti is quashed against this petitioner alone and this Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

15.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MR



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Crl.O.P.(MD)No.627 of 2023

To

1.The Judicial Magistrate No.II,
Usilampatti.

2.The Inspector of Police,
Checkanurani Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.627 of 2023

K.RAJASEKAR,J

MR

Order made in

CRL.OP.(MD)No.627 of 2023

Dated: 15.07.2024