



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.01.2022

Delivered on : 28.01.2022

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

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Crl.OP(MD)No.9903 of 2017

and

Crl.M.P. (MD)No.6759 of 2017

1.P.Periyasamy

2.P.Babu @ Krishnamoorthy

3.P.Arun Raja

... Petitioners/A1 to A3

Vs.

1.The State, Rep. through

The Inspector of Police,

Keelavalavu Police Station,

Melur, Madurai District.

... 1st Respondent/Complainant

2.R.Kannan

... 2nd Respondent/

De-facto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records of the case in P.R.C.No.32 of 2016, on the file of the learned Judicial Magistrate, Melur and quash the same as against these petitioners.

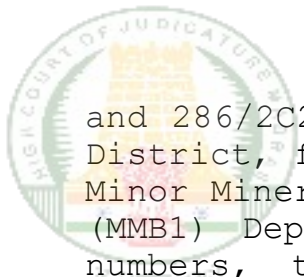
For Petitioners : No Appearance

For Respondents : Mr.Hassan Mohammed Ali Jinnah
Public Prosecutor &
Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed by A1 to A3 in Crime No.160 of 2012, dated 06.08.2012, on the file of Keelavalavu Police Station, to quash the final report filed by the first respondent Police and taken on file by the learned Judicial Magistrate, Melur, as P.R.C.No.32 of 2016.

2. The first respondent Police based on the complaint given by R.Kannan, Village Administrative Officer of Saruguvalayapatti Village, had registered a complaint on 06.08.2012. According to the said complaint, P.Periyasamy, the first accused/first petitioner herein was granted granite lease to quarry multi-colour granite over an extent of 1.25.0 Hectares of Patta land in S.No.286/2B2, 286/2C1



and 286/2C2 etc. in Saruguvalayapatti Village, Melur Taluk, Madurai District, for a period of 20 years under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, vide G.O.(3D)No.90, Industries (MMB1) Department, dated 30.11.2006. However, beyond the survey numbers, the said P.Periyasamy and his Henchman had exploited granite illegally from the neighbouring land in S.Nos.286/2B1, 286/2C3 and 286/2C4 and also in the Government Poramboke land in S.No.286/1. Therefore, the de-facto complainant had requested the first respondent Police to take appropriate action for theft of granite from the Government land and extraction of granite from the Patta land without proper licence.

3. Pursuant to the complaint, investigation has been taken up. Meanwhile, Geology Department, had caused notice to the first accused/first petitioner to show cause why action should not be taken against him for excess exploitation of granite in the leasehold land and unauthorized extract of granite in the other Patta land of the Government land without any authority and lease.

4. The first respondent Police which has taken up the investigation based on the complaint given by the Village Administrative Officer, Saruguvalayapatti Village, had examined 58 witnesses and filed final report against 13 persons, for the alleged offences punishable under Sections 447, 379, 420, 430, 434, 465, 467, 468, 471 read with Sections 109 and 114 of I.P.C. and Sections 3(i)(ii), 4 and 6 of TNPPDL Act, 1992 read with Section 3(a) and 4 (a) of the Explosives Substances Act, 1908 read with Section 120-B of I.P.C.

5. The sum and substance of the final report is that A1 to A3 had indulged in illegal extract of quarry by violating the quarry licence granted to the first accused - P.Periyasamy by the Government vide G.O.(3D)No.90, Industries [MMB1], dated 30.11.2006. The accused persons between February 2007 and August 2012, had on various places and on various dates, jointly and severally had illegally extracted granite in S.No.286/3, which is the Odai Poramboke and in S.No.286/3, the Government Nanja Poramboke and also in S.No.286/2B1, 286/2C3 and 286/2C4 without any licence. With the help of heavy vehicle, the accused had trespassed into the Government Poramboke land and removed the boundary stones. Using J.C.B. machines had extracted granite from the Government land and Patta land without any permit. For such extract of granite, explosives substances were used.

6. The petitioners herein on receiving copies of documents along with the final report, had approached this Court seeking quash of the charge sheet on the ground that they are extracting granite based on the lease granted. The complaint and the investigation conducted by the first respondent Police are biased, truncated and motivated action. Based on the lopsided evaluation report of the



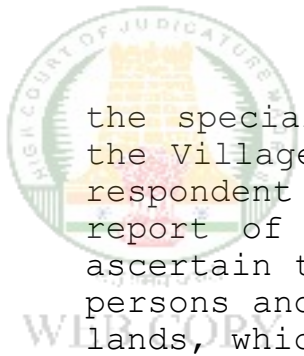
been filed.

7. The allegation in the final report that till August 2012, the petitioners are exploiting granite itself is an incorrect statement, since the petitioners stopped the quarry operation in the year 2009 itself after disconnection of the electricity service connection. Without taking this fact into account and suppressing this fact, final report has been filed without any supporting material evidence. The 161 Cr.P.C. statements of the witnesses are stereo type and recorded as tutored by the Investigation Officer and therefore, they are not reliable witnesses and the statements are not reliable. No material has been recovered to prove the allegation of theft. In the absence of recovery of granite alleged to be illegally extracted, the charge under Section 379 of I.P.C. would not sustain. Similarly, the allegations of offences under Sections 420, 465, 467, 468 and 471 of I.P.C. are also not made out, since nothing recovered from the accused persons. The use of explosive materials by the granite quarries is permitted under the Act. The first petitioner, who is a lease holder for mining granite has a permission to use explosive material and therefore, no offence is made out to prosecute the petitioners under the Explosive Substances Act. When the witnesses have not stated anything about the direct overt act of the petitioners, who are A1 to A3, the final report is liable to be quashed.

8. The State has filed a detailed counter through the Inspector of Police, Keelavalavu Police Station, wherein it is stated that the first accused P.Periyasamy was granted lease for excavating multi-colour granite to an extent of 1.25.0 Hectares of land in Saruguvalayapatti Village for a period of 20 years. He, in the course of quarrying operation in the permitted land, had also trespassed into the adjacent Odai Poramboke land in S.No.286/3 and Government Nanja Tharisu in S.No.286/1 and other Patta lands and excavated granite stones worth 118.08 Crores. For the purpose of excavating granite, explosive substances were used. Public Works Department officials, who have inspected the quarry site, had assessed there is damage to the public property to an extent of 9.70 lakhs.

9. On examination of the statements of witnesses and documents collected in the course of investigation, materials available incriminating the accused persons for the offences punishable under Sections 447, 379, 420, 430, 434, 465, 467, 468, 471 read with Sections 109 and 114 of I.P.C. and Sections 3(i)(ii), 4 and 6 of TNPPDL Act, 1992 read with Section 3(a) and 4(a) of the Explosives Substances Act, 1908 read with Section 120-B of I.P.C.

10. Regarding the grounds raised by the petitioners in the quash petition, it is stated that apart from investigation by the Police, the Government has constituted a special team to evaluate



the special team report also substantiates the complaint given by the Village Administrative Officer. The investigation by the first respondent Police is independent of the special team. However, the report of the special team has been taken into consideration to ascertain the extent of loss caused to the Government by the accused persons and the estimated value of granite illegally stolen from the lands, which are not permitted for excavation.

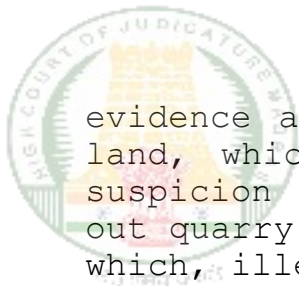
11. Regarding non-seizure of material objects, the learned Public Prosecutor would submit that illegal excavation of granite under the garb of excavating granite in the permitted leasehold area was carried on by the petitioners for a long time and substantial portion of the granite which were illegally extracted had already been exported to foreign countries. In this regard, apart from the evaluation report, the statement of the Auditors, Income Tax Return and other documents are available. On cumulative assessment of these documents, the evidence collected by the prosecution is sufficient to prosecute the petitioners for illegal extraction of minerals and causing unlawful loss to the Government.

12. The defence of the petitioners that their activity has been protected by the interim order of this Court in W.P.Nos.859 and 860 of 2013 is incorrect and the said interim order is only in respect of Patta land, for which, quarry licence was granted to the petitioners and this protection cannot be misused for extracting granite illegally from non-permitted areas, including the Government Poramboke land.

13. In the counter affidavit, the relevant portions of the statements given by the witnesses, which incriminate the petitioners for the alleged offences have also been extracted.

14. This Court on perusing the documents relied by the prosecution and the records, which includes the Special Team's evaluation report is clearly of the view that there is enough material collected by the prosecution to proceed against the petitioners for the offences punishable under Sections 447, 379, 420, 430, 434, 465, 467, 468, 471 read with Sections 109 and 114 of I.P.C. and Sections 3(i)(ii), 4 and 6 of TNPPDL Act, 1992 read with Section 3(a) and 4(a) of the Explosives Substances Act, 1908 read with Section 120-B of I.P.C.

15. The licence granted to the first petitioner in the year 2006 is to a limited extent of 1.25.0 Hectares of land in the survey numbers, which are specifically mentioned in the said Government Order. However, from the reports and records, there are *prima facie* materials to infer that exploitation of granite stones done in other areas also, which are contingent to the survey numbers, for which, lease was granted. The special team report indicates that without access from the leasehold land, the exploitation which has taken place in the unleased land could not have occurred. The tell-tale



evidence available indicates that granite stone exploited from the land, which are not permitted to extract granite, the needle of suspicion points to the petitioners herein, who had been carrying out quarry activity in the land adjacent to the survey numbers, from which, illegal quarry has been done.

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16. The petitioners are bound to explain how without their connivance, the said illegal extraction has taken place. The Income Tax Return and the statement of other witnesses are sufficient to proceed against these petitioners for the offences alleged above. The investigation disclosed adequate material to prosecute the petitioners herein and the material placed indicates that it is not a groundless prosecution as alleged by the petitioners to exercise the power under Section 482 of Cr.P.C. to quash the final report.

17. When there is sufficient material to indicate violation of Explosive Substances Act, the Mines and Minerals [Development and Regulation] Act, 1957 and the I.P.C., it is not a fit case to quash the proceedings without trial

18. As a result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate,
Melur.
2. The Inspector of Police,
Keelavalavu Police Station,
Melur, Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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