



CRL MP(MD) No.12603 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Fifth day of November Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.M.P(MD)No.12603 of 2024

in

Crl.O.P.(MD)No.20381 of 2024

WILSON

... PETITIONER/ ACCUSED 1

Vs

THE SUB INSPECTOR OF POLICE,
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO.145/2023.

... RESPONDENT/COMPLAINANT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Stay all further proceedings in CC No.579/2023 on the file of the Learned Judicial Magistrate I, Kuzhithurai, Kanyakumari District pending disposal of the Crl OP.

Prayer in CRL OP(MD). 20381/ 2024 :

To call for the records pertaining in CC No.579/2023 on the file of the Learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District and Quash the same as far as the petitioner concerned.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of

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Mr.C.MUTHUSARAVANAN, Advocate for the petitioner and of Mr.K.SANJAI GANDHI, Government Advocate(crl.side) on behalf of the Respondent, While admitting the Criminal Original Petition, the court made the following order:-

Mr.K.Sanjai Gandhi, learned Government Advocate (Criminal side) takes notice for the respondent.

2. The petitioner / A1 in C.C.No.579 of 2023, who is facing charges for the offences under Section 379 I.P.C. and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, has filed this quash application.

3. The learned counsel for the petitioner contends that the petitioner, along with three others, has been prosecuted in the present case. The allegations against the petitioner are that, on 19.04.2023, at about 09:30 a.m., the petitioner (A1), who is the owner of the property, with the assistance of A2 and A3, arranged for a hydraulic compressor to be brought on a tractor bearing Registration No.TN-32-V-2687. A4 allegedly brought a hydraulic excavator, and without the necessary licence or approval, mineral rocks were broken and excavated with the intention to transport and sell them. Following a complaint from the Village Administrative Officer (V.A.O.), a case was registered, and upon completion of the investigation, a charge sheet was filed, listing seven witnesses.

4. The learned counsel for the petitioner further argues that, following the



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judgment of the Full Bench of this Court in the case of S.Kumar vs. The District Collector, Kokkirakulam, Tirunelveli District and others [W.P.(MD) No. 14341 of 2022, dated 13.06.2023], it is clear that a charge sheet for an offence under Section 379 I.P.C. and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, cannot be filed simultaneously. According to the Mines and Minerals (Development and Regulation) Act, 1957, the prosecution cannot be initiated by the Police, and it is only the proper officer who is authorized to file a private complaint and proceed with offences under the Act. In the present case, no such action has been taken. Therefore, the charge against the petitioner under Section 21(1) of the Mines and Minerals (Development and Regulation) Act is not maintainable. Further, the petitioner submits that with respect to the offence under Section 379 I.P.C., the property does not belong to the petitioner, but to his wife, and the petitioner, who is employed as a teacher in Mumbai, was not present at the scene of occurrence.

5. The learned counsel for the petitioner further submits that the total extent of the land involved is approximately 920.70 sq.mts., which is about 22.750 cents. The land is located in the heart of Nagercoil, and it would be difficult for such excavation to go unnoticed, especially if it were intended for commercial purposes. The learned counsel also points out that under Rule 17 of the Tamil Nadu Minor Mineral Concession Rules, 1959, a registered holder may quarry minor minerals free of charge



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on a small scale for personal use, provided it is for a specific bona fide purpose.

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However, no details have been provided regarding the quantity of the excavated stones, how they were stocked, or whether they were being transported for commercial use. In view of the lack of such details, the learned counsel for the petitioner argues that there is no criminality in the petitioner's actions and seeks for the charge sheet to be quashed.

6. The learned Government Advocate (Criminal side) submits that, following the complaint of the Village Administrative Officer, an F.I.R. was registered. After the registration, seven witnesses were examined. The de-facto complainant (V.A.O.) has stated that, on 19.04.2023, he visited the scene of the occurrence and found hydraulic equipment (a compressor and excavator), which are typically used for commercial purposes. He therefore lodged the complaint, and the hydraulic compressor, tractor, and excavator were seized from the scene.

7. Regarding the quantity of mineral stones, their storage, and whether they were intended for commercial or domestic use, the learned Government Advocate requests time to file objections.

8. Considering the submissions made by the learned counsel for the petitioner, this Court finds merit in the arguments and is inclined to grant an interim stay on all further proceedings in C.C.No.579 of 2023, pending before the Judicial Magistrate



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Court No. I, Kuzhithurai, Kanyakumari District. Accordingly, an interim stay is
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hereby granted.

sd/-
25/11/2024

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/12/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SMN2
TO

1 THE JUDICIAL MAGISTRATE NO.I,
KUZHITHURAI, KANYAKUMARI DISTRICT.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.

3 THE SUB INSPECTOR OF POLICE,
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-14566[I] dated 27/11/2024)

ORDER IN
Crl.M.P(MD)No.12603 of 2024
in
Crl.O.P.(MD)No.20381 of 2024
Date :25/11/2024

SA/VR/SAR. /03.12.2024/5P/6C

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