



CRL.A(MD).No. 34 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 22.08.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.34 of 2022

Muthan

... Appellant/Accused No.1

Vs.

State rep. by
The Inspector of Police,
Elumalai Police Station,
Madurai District.
Crime No.86 of 2015

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed against the appellant by the Judgment dated 06.12.2021 made in Spl.C.C.No.4 of 2021 on the file of the Special Court for MMDR Act, Madurai.

For Appellant : Mr.B.Jeyakumar

For Respondent : Mr.M.Karunanidhi
Government Advocate (Criminal Side)

JUDGMENT

This appeal has been filed by the appellant / accused No.1, against the conviction and sentence passed against him by the Judgment dated 06.12.2021 in Spl.C.C.No.4 of 2021 on the file of the Special Court for



CRL.A(MD).No. 34 of 2022

MMDR Act, Madurai, convicting the appellant under Section 379 of IPC and sentencing him to undergo two years Rigorous imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 3 months Rigorous imprisonment.

2.The case of the prosecution is as follows:

The case of the prosecution is that on 04.07.2015 at about 10.30 hours on getting a secret information that sand is being illegally quarried for embankment of Seel Odai (brook) which is situated to the west of Ooranipatti village, the Special SubInspector Raja along with two other constables, namely Singam @ Singaraj and Vijayakumar, had gone to the said place where they found the first accused Muthan, S/o.Muthaiah illegally stealing sand in a tractor attached with a trailer bearing Regn.No.TN60-X-3350 belonging to one Ramar, S/o.Mariappa Thevar. Since the said Muthan, S/o.Muthaiah had stolen sand without any permit from the authorities concerned he was slapped with the charge of stealing punishable U/s.379 IPC r/w Section 21(5) of the Mines and Minerals (Development & Regulation) Act, 1957. The Investigation Officer had completed his investigation and had filed the final report which has been initially taken on file by the learned Judicial Magistrate No.II, Usilampatti



CRL.A(MD).No. 34 of 2022

in CC No.147/2016 on 21.11.2016 against two accused U/s.379 IPC.

Thereafter on appearance of both the accused, copies have been furnished as stipulated U/s.207 Cr.P.C and charges have been framed against both the accused. The learned Judicial Magistrate No.II, Usilampatti on perusal of the records since did not find any grounds for discharge would frame charges U/s.379 IPC. Since both the accused have pleaded not guilty, a trial had been ordered.

3. After the case was posted for trial, the case was transferred to the file of learned Principal District Judge, Madurai as per the direction of the Hon'ble Division Bench of the Hon'ble High Court given in Muthu Vs District Collector, Pudukottai and others reported in CDJ 2018 MHC 7179. The said case on transfer was taken on file by the learned Principal District Judge, Madurai on 03.10.2019 as Spl.C.C.No. 205/2019 as per the Circular No.4/2019/A1 dated 11.07.2019. Again on constitution of the Special Court the case had been transferred to the Special Court and had been taken on file as Spl.C.C.No.4/2021.

4. In the trial, the prosecution so as to prove its case had examined 6 witnesses as P.W.1 to P.W.6 and have exhibited five documents as Ex.P1 to



CRL.A(MD).No. 34 of 2022

Ex.P.5. P.M.O.1. was also marked.

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5. The learned trial Judge after recording the evidence questioned the first accused under Section 313 Cr.P.C proceedings after disclosing the incriminating evidence against him and he denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witnesses on his side.

6.The learned trial Judge, on considering the evidence of witnesses and documents, convicted and sentenced the appellant for the offence as stated supra and acquitted another accused. Aggrieved over the same, the appellant preferred this appeal.

7.The learned counsel for the appellant would submit that there is a material contradiction relating to the quantity of the sand. According to PW1 it is $\frac{1}{2}$ unit. But according to the Revenue Divisional Officer, it is $\frac{1}{4}$ unit. There is a contradiction relating to the said quantity of the sand recovered from the appellant, which was not properly considered by the Court below. Apart from that PW3 and PW4 have turned hostile. The same was also not considered by both the Court below. Hence, he seeks to set



CRL.A(MD).No. 34 of 2022

aside the conviction. He also submitted that presence of crime number in the athatchi before registration of case creates a doubt over prosecution case and the recovery.

8.The learned Government Advocate (Crl. Side) on going through the records and also would submit that the presence of crime number is not material, when the same was properly explained by the Search Officer, stating that he knew the last crime number of the station and hence, mentioned the same. The court below has correctly convicted the appellant for the possession of the sand.

9.This Court considered the rival submission and perused the records.

10.PW1 and PW2 clearly deposed about the recovery of sand from the custody of the appellant and the same was properly considered by the learned trial Judge. Even though they were subjected to cross examination, nothing has been elicited to disbelieve the search and recovery of sand. Apart from that the sand also was produced. It is true that there is some inconsistency relating to quantity of sand. The same is not a ground as



CRL.A(MD).No. 34 of 2022

WEB COPY
rightly argued by the learned Government Advocate to disbelieve the evidence recorded by the trial Judge. This Court is not inclined to accept the argument to disbelieve the evidence on the basis of the discrepancies relating to the quantity of sand recovered.

11.The learned Government Advocate (Crl. Side) would state the Officer gave explanation that before the Court that he knew the last crime number and hence he had mentioned it in the athatchi. Apart from that the Criminal Rules of Practice also demands the crime number. The said explanation was accepted by the learned Judge. This Court finds no reason to differ with the said finding of the learned Judge. In view of that this Court is inclined to confirm the conviction. However, the appellant is aged about 55 years and he is the only breadwinner of his family and also was confined in prison during the trial. Hence, this Court is inclined to reduce the sentence to the period of imprisonment already undergone with imposition of compensation.

12.Accordingly, this criminal appeal is partly allowed. The conviction rendered by the trial Court is hereby confirmed. The sentence is reduced to the period already he undergone. The fine imposed by the trial



CRL.A(MD).No. 34 of 2022

Court is hereby confirmed. Apart from that this Court is inclined to impose compensation of Rs.20,000/- to the Government Higher Secondary School, Thiruchuli, Virudhunagar District. Accordingly, the appellant/accused No.1 is hereby directed to pay a sum of Rs.20,000/ (Rupees Twenty Thousand only) to the Government Higher Secondary School, Thiruchuli, Virudhunagar District as Compensation within a period of one month from the date of receipt of a copy of this Judgment, failing which, the sentence imposed by the learned trial Judge will automatically be restored.

22.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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CRL.A(MD).No. 34 of 2022

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- 1.The Special Judge, Special Court to Deal with the cases of offences in contravention of the provisions of the Mines and Minerals (D&R) Act, Madurai.
- 2.The Inspector of Police,
Elumalai Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.
- 5.The Headmaster,
Government Higher Secondary School,
Thiruchuli, Virudhunagar District.



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CRL.A(MD).No. 34 of 2022

K.K.RAMAKRISHNAN,J.

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Order made in
CRL.A(MD).No.34 of 2022

22.08.2025