



Crl.A.(MD)No.275 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

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Pandi @ Madras Pandi

... Appellant/
Accused No.1

Vs.

State through
The Inspector of Police,
M.Kallupatti Police Station,
Madurai District.
(Crime No.74 of 2011)

... Respondent/
Complainant

Prayer : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to call for the entire records connected to the judgment in Spl.S.C.No.50 of 2021 on the file of the Special District Court to deal with cases of Offences in Contravention of Provisions of Mines and Minerals (D and R) Act, Madurai dated 15.03.2022 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Albert James
Government Advocate (Crl. Side)



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JUDGMENT

This appeal has been filed by the appellant / first accused, against the judgment and conviction dated 15.03.2022 rendered by the Special Court to deal with the cases of offences in contravention of the Provisions of Mines and Minerals (D & R) Act, Madurai, in Spl.S.C.No.50 of 2021 convicting the appellant under Section 379 of IPC and sentencing him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months rigorous imprisonment.

2. The case of the prosecution is as follows:

On 06.08.2011, upon the receipt of secret information regarding sand theft, at about 13.00 hours P.W.1 to P.W.5 went for rounds to prevent sand smuggling. While they were on such duty, they stopped a tipper lorry bearing Registration No.TN-28-AA-6691 near Konampatti intersection, which was driven by the second accused and the appellant and the third accused were sitting in the cabin of the said vehicle and they found that the accused persons were illegally transporting two units of river sand and at that time, the appellant instructed the second accused to run the vehicle over the police and kill them, and on such instruction, the second accused



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had driven the vehicle menacingly towards the police and all the police flinched and fell down while trying to escape from being hit by the vehicle and thereafter, the police chased the accused with their two wheelers and arrested the accused 2 and 3 but the appellant jumped out of the vehicle and escaped. Thereafter, FIR was registered in Crime No.74 of 2011 for the offences punishable under Sections 294(b), 353 and 307 IPC r/w 379 IPC and Section 20(1)(5) of Mines and Minerals (Development and Regulation) Act, 1957.

3. After completion of investigation, final report came to be filed before the District Munsif cum Judicial Magistrate No.I, Usilampatti and the same was taken on file in P.R.C.No.27 of 2012. After appearance of the accused, copies were served under Section 207 Cr.P.C. and the case was committed to the III Additional Assistant Sessions Court (Sub-Court) camp of Usilampatti, Madurai and trial was conducted. Then, the learned III Additional Assistant Sessions Judge framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood trial. Subsequently, the case was transferred to the Special Court to Deal with the Cases of Offences in Contravention of the



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Provisions of the Mines and Minerals (D&R) Act, Madurai and the same was taken on file in Spl.S.C.No.50 of 2021.

4. During trial, the prosecution to prove its case examined 9 witnesses as P.W.1 to P.W.9, exhibited 11 documents Ex.P1 to Ex.P11 and marked 1 material object as P.M.O.1.

5. The learned trial Judge after recording the evidence questioned the accused under Section 313 Cr.P.C proceedings after disclosing the incriminating evidence against them and they 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 their side.

6. The learned trial Judge, on considering the evidence of witnesses and documents, convicted and sentenced the appellant for the offence under Section 379 IPC. The trial Court acquitted the accused in respect of the other offences. Aggrieved over the same, the appellant preferred this appeal.



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7. The learned counsel appearing for the appellant would submit that P.W.6 and P.W.7 turned hostile and all other witnesses are official witnesses, that the presence of the appellant of the scene of occurrence is highly doubtful and the same was not properly considered by the learned trial Judge, that there was no injury caused to any of the officers, that there was no recovery from the appellant, that the appellant is only a owner of the tipper lorry and that there are discrepancies with regard to the quantity of sand. Therefore, he seeks to set aside the conviction and sentence passed by the Court below.

8. The learned Government Advocate (Criminal Side) on instructions and also on going through the records and impugned judgment would submit that it is a case where the appellant is involved in the illegal mining habitually and that the appellant is having six previous cases. Therefore, he seeks to confirm the conviction and sentence passed against the appellant.

9. This Court considered the rival submissions made on either side and perused the materials available on record and also the impugned



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judgement passed by the learned trial judge.

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10. According to the prosecution, the appellant and the accused 2 and 3 were present at the scene of occurrence along with the stolen sand and the appellant instigated the second accused, who drove the tipper lorry of the appellant, to dash against the police officials, namely, P.W.1 to P.W. 5, on such direction, the second accused drove his vehicle menacingly but P.W.1 to P.W.5 escaped from the attack and thereafter, they arrested the accused 2 and 3 along with the sand but the appellant escaped from the scene of occurrence. With these allegations, final report was filed.

11. The reasoning of the trial Court in convicting A1 alone under Section 379 IPC, while acquitting him of the other charges and not framing any charge under Section 379 IPC against A2 and A3, who were admittedly found in actual possession of the sand and vehicle, is legally unsustainable. The evidence let in by the prosecution itself establishes that A2, the driver, and A3, the cleaner, were present at the scene along with the vehicle and they illegally quarried sand, and that the seizure mahazar was prepared at the spot. No recovery whatsoever was effected from A1.



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Nevertheless, the prosecution chose to frame the charge under Section 379 IPC exclusively against A1, who allegedly fled from the scene.

12. When the prosecution witnesses themselves deposed that A1, A2, and A3 were found in possession of the sand in the vehicle and that the vehicle and sand were seized only from A2 and A3, the conviction of A1 alone on the basis of the very same indivisible and inseparable evidence cannot be legally sustained. The evidence of P.W.1 to P.W.5, far from supporting the prosecution, clearly reveals that A2 and A3 were the persons found in possession of the sand, yet they were not even charged under Section 379 IPC. Such a selective prosecution strikes at the very root of the prosecution case.

13. Further, the presence of five police officers at the scene renders the prosecution version inherently improbable. The claim that all the police personnel were unable to apprehend A1, who allegedly escaped from the spot, does not inspire confidence and appears wholly unbelievable. This Court therefore finds the prosecution story regarding the presence and alleged escape of A1 is inherently doubtful. In the



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absence of any recovery from A1 and without any cogent and acceptable evidence establishing his conscious possession or active participation in the alleged theft of sand, fastening criminal liability upon him under Section 379 IPC is wholly impermissible in law. Added to this, there exists a material contradiction regarding the quantity of sand allegedly recovered. While the prosecution case refers to recovery of three units of sand, the RDO report mentions only two units, thereby creating further doubt about the genuineness of the prosecution case. In such circumstances, this Court is of the considered view that there is no legally sustainable evidence to convict A1 under Section 379 IPC. The prosecution has miserably failed to establish the charge against the appellant beyond reasonable doubt. Accordingly, the appeal deserves to be allowed and the conviction and sentence imposed upon A1 under Section 379 IPC is liable to be set aside.

14. Merely because the accused was involved in previous criminal cases, the same cannot be taken as substantive evidence to sustain conviction in the present case under Section 379 IPC. Each case has to be decided on its own merits and on the basis of evidence available on



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record.
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15. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / first accused under Section 379 IPC in Spl.S.C.No.50 of 2021 on the file of the Special District Court to deal with cases of Offences in Contravention of Provisions of Mines and Minerals (D and R) Act, Madurai dated 15.03.2022 is hereby set aside. The appellant / first accused is acquitted of all charges. Fine amount, if any paid, shall be refunded. Bail bond, if any, shall stand terminated.

22.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

- 1.The Judge,
Special Court to deal with the cases of Offences in
Contravention of the Provisions of Mines and Minerals
(D & R) Act, Madurai.
- 2.The Inspector of Police,
M.Kallupatti Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

csn

Judgment made in
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