



CRL OP(MD). No.19885 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.11.2025

PRONOUNCED ON : 25.11.2025

CORAM

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**CRL OP(MD). No.19885 of 2025**

and

**CRL MP (MD) Nos.16741 and 16742 of 2025**

Devanandh

... Petitioner

Vs.

1. The State of Tamil Nadu rep. by  
Rep. by the Inspector of Police,  
Usilampatti Taluk Police Station,  
Madurai District.  
(Crime No.20 of 2025)

2. Singaravelan

... Respondents

PRAYER :- This Petition is filed under Section 528 BNSS, to call for the records pertaining to the impugned Charge Sheet in PRC No.15 of 2025 on the file of the Judicial Magistrate-I, Usilampatti, Madurai and quash the same.

For Petitioner : Mr.Sricharan Rangarajan, Sr. Counsel  
for Mr.S.Ram Sundar Vijayaraj



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For Respondents : Mr.K.Sanjai Gandhi (for R1)  
Government Advocate (Crl.Side)

### **ORDER**

The petition challenges the final report in PRC No.15 of 2025, filed before the learned Judicial Magistrate, Usilampatti, Madurai, filed for the offence under Section 303 (2) of BNS r/w Section 21(v) of the Mines and Minerals (Development and Regulation) Act, 1957 [hereinafter referred to as 'the MMDR Act']

2. The gist of the allegations in the final report is that during a routine vehicle checkup on 30.01.2025 at about 5.00p.m., the respondents had intercepted a tipper lorry and during the search, they found out that the lorry was transporting three units of M-Sand without a transport permit and which have been excavated from the quarry run by the petitioner herein in the name of CDR Blue Metals. It is further the case of the prosecution that the 1<sup>st</sup> accused is the driver of the tipper lorry, the 2<sup>nd</sup> accused is the owner of the tipper lorry and the 3<sup>rd</sup> accused/petitioner, owned the quarry.



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3. Mr.Sricharan Rangarajan, learned senior counsel appearing for the petitioner would submit that the fact that the petitioner is a licensed quarry proprietor and also a licensed stockyard holder, is not in dispute; that he would not be liable for transportation without valid transport permit, as he had not transported the same; that in any case, the petitioner cannot be accused of the offence under Section 303(2) of the BNS, corresponding to Section 379 of the IPC, as the M-Sand even according to the prosecution was taken from the petitioner's licensed quarry; and that the respondents have no jurisdiction to file a final report for the offence under Section 21(v) of the MMDR Act, as under Section 22 of the MMDR Act, no Court shall take cognizance of the said offence except on a complaint of an authorised officer.

4. The learned Government Advocate (Crl.Side) appearing for the respondents *per contra* would submit that the Hon'ble Supreme Court and this Court had in several cases held that if a violation under MMDR Act also constitutes an offence under the Penal Code, the respondent would be entitled to register an FIR and investigate both cases and it will not amount to double jeopardy as they are distinct offences and the



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question as to whether the petitioner had committed theft cannot be adjudicated in a quash petition and sought for dismissal of the quash petition.

5. When this Court expressed a doubt as to how an offence of theft would be made out, if the minerals are removed from a licenced quarry, the learned senior counsel for the petitioner and the learned Government Advocate (Crl.Side) cited various judgments.

6. From the judgments cited on either side, it is clear that when there is a violation under the MMDR Act and if it also constitutes theft under Section 378 of the IPC, the accused can be prosecuted both for the offence of theft and for the violations under the MMDR Act.

7. A Division Bench of this Court in *Sengol and others vs. State*, reported in **2012 (2) CTC 369 : 2012 CrI.J 1705** had held that the ingredients of the offence under Section 378 of the IPC and the offences under Section 21 of the MMDR Act are totally different and therefore, there is no bar in prosecuting the violaters under both the provisions.



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8. The very same question came up before the Hon'ble Supreme Court in *State (NCT of Delhi) v. Sanjay* reported in **2014(9) SCC 772** and the Hon'ble Supreme Court affirmed the views of the Division Bench of this Court and held that the accused persons can be prosecuted for both the offences. The relevant portion from the said judgment reads as follows:

69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take



cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above



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by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure. *(emphasis supplied)*

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly.”

9. From the above observations, it would be clear that where there is illegal mining of minerals of any kind in the property of the State and when the mineral is removed out of State's possession without the



consent of the State, it would constitute the offence of theft. However, it is seen that in a number of cases, the police have been registering FIRs for the offence under Section 378 of the IPC, even if the minerals are removed from a licensed quarry, alleging violations of conditions of the licence. Section 303 (1) of the BNS corresponding to Section 378 of the IPC defines, 'theft' as follows:

“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.”

**Explanation 1:** A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

**Explanation 2:** A moving effected by the same act which effects the severance may be a theft.

**Explanation 3:** A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

**Explanation 4:** A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

**Explanation 5:** The consent mentioned in this section may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.”



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10. Section 303(1) of BNS is verbatim the same as Section 378 of the IPC. In order to constitute the offence of theft, the following ingredients have to be proved.

(a) intention to take dishonestly;

(b) any movable property out of the possession of any person without that person's consent; and

(c) moving that property in order to such taking.

11. Explanation 2, 3 and 4 has been incorporated to explain as to what kind of movement even before taking of the property could constitute 'theft'. Explanation 5 deals with the nature of the consent that may be given by the person in possession.

12. From the above, it could be seen that possession and removal from a person's possession dishonestly without his consent are the key ingredients of the offence. In fact it would be interesting to note that a person can be accused of theft of his own property. Therefore it is not the ownership but possession which is relevant for an offence of theft.



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Illustration 'k' in Section 303(1) of BNS, which reads as follows makes that very clear.

“Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.”

13. Thus, unless the police are able to show that the minerals were removed from the possession of any person without that person's consent, the offence of theft would not be made out for mere violations of conditions of licence. In fact, in the judgment of the Hon'ble Supreme Court, it would be seen that the Hon'ble Supreme Court had only referred to illegal quarrying from the property in the possession of the State as theft. Therefore, the police should bear in mind that they cannot mechanically register an FIR for the offence under Section 303(2) of the BNS, unless the above ingredients are made out.

14. In this case, even according to the prosecution the minerals were taken from the petitioner's quarry. It is not in dispute that the petitioner had a valid permit to quarry the land for a period of ten years,



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which was issued under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Mineral and Mineral Dealers Rules, 2011.

Therefore, the final report filed against the petitioner and others for the theft of minerals even assuming that it was transported without a valid permit, cannot be sustained.

15. If it is the case of the police that the petitioner or the other accused had illegally excavated or quarried more than the permissible limit, the same would be a violation of the conditions of license, for which the Act contemplates initiation of criminal prosecution as well as penalty proceedings.

16. It is the case of the petitioner that the petitioner and others have not violated Section 21(v) of the MMDR Act. This Court would not go into the question as to whether the said offence is made out since the impugned final report which has been filed for violation of Section 21(v) of the MMDR Act cannot be sustained as it is in violation of Section 22 of the MMDR Act, which provides for taking of cognizance of such offences under the MMDR Act only on the complaint of the



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authorised officer. The final report therefore filed for the offence under Section 21(v) of the MMDR Act, is misconceived and cannot be sustained. Since the offence under Section 303(2) of the BNS is not made out and the respondents have no jurisdiction to file the final report under Section 21(v) of the MMDR Act, the impugned final report cannot be sustained and therefore, is liable to be quashed.

17. During the course of arguments, it was also pointed out that though the respondents are registering FIRs for the violations or for the offences committed under the MMDR Act and they would have no jurisdiction to register an FIR, if they do not have the jurisdiction to file the final report. However, it is seen that this question has been answered by the Division Bench of this Court in *Sengol's case* [cited supra] wherein this Court has held that even if the respondents have no jurisdiction to file the final report, registration of FIR cannot be faulted and ultimately when the final report is filed the respondents would have jurisdiction to file final report for the offence under the Penal Code and the authorised officer would have jurisdiction to file a complaint as contemplated under Section 22 of the MMDR Act.



18. The Hon'ble Supreme Court in ***Jayant vs. State of Madhya***

***Pradesh***, reported in **2021(2) SCC 670** has dealt with the question as to whether the Magistrate can direct registration of the FIR for the offences under the MMDR Act. The Hon'ble Supreme Court held that the Magistrate may be empowered to direct registration of the FIR for both the offences as at that stage no cognizance is taken and at the time of the conclusion the authorised officer can file the complaint for the violation under Section 22 of the MMDR Act and investigating officer/police can file the final report for the offence under the penal Code. The relevant portion from the aforesaid judgment is extracted hereunder for better understanding.

“**21.1.** That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In-charge/SHO of the police station concerned to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted.

**21.2.** The bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and the Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and the Rules made thereunder.

**21.3.** For commission of the offence under IPC, on receipt of



the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and the Rules made thereunder.

**21.4.** That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the In-charge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

**21.5.** In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the



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offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.”

19. Therefore, this Court is of the view that even if the police register an FIR for the offences under the MMDR Act, only a complaint can be filed by the authorised officer for the said offences, and the Court cannot take cognizance of the said offences on the final report filed by the police. Hence, the impugned final report for all the aforesaid reasons is quashed with liberty to the authorised officer to file a complaint if so advised for any alleged violations or offences committed under the MMDR Act.

20. With the above observations, this Criminal Original Petition stands allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

**25.11.2025**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
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To  
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- 1.The Judicial Magistrate-I  
Usilampatti,  
Madurai.
- 2.The Inspector of Police,  
Usilampatti Taluk Police Station,  
Madurai District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**SUNDER MOHAN,J.**

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**Pre-delivery order in**  
**CRL OP(MD) No.19885 of 2025**

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