



Crl.OP(MD)No.22278 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2025

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22278 of 2025

and

Crl.M.P.(MD)Nos.18607, 19203 and 19204 of 2025

Lakshmanan Anburaj

... Petitioner

Vs.

The State of Tamilnadu,
Rep. by the Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.

(Cr.No.313 of 2025)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the C.C.No.2258 of 2025 pending on the file of the learned Judicial Magistrate No.III, Tirunelveli, and quash the same.

For Petitioner : Mr.V.Sukumar

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (Crl. side)

ORDER

Preface:

This Criminal Original Petition has been filed invoking the inherent jurisdiction of this Court seeking quashment of the criminal



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proceedings in C.C.No.2258 of 2025, wherein the petitioner has been arrayed as the sole accused for the offence punishable under Section 303(2) of the Bharatiya Nyaya Sanhita, 2023, corresponding to Section 379 of the Indian Penal Code, arising out of Crime No.313 of 2025 on the file of the respondent police.

Case of the prosecution:

2. The prosecution case, as reflected in the First Information Report and the final report, is that on 07.06.2025 at about 14:00 hours, the respondent police received secret information regarding illegal excavation of river sand using a JCB bearing Chassis No. 1029526 C 2004 at the graveyard area of Thonithurai.

3. Acting upon the said information, the police officials proceeded to the spot and allegedly found the petitioner excavating river sand without valid permission. The vehicle was seized and an FIR came to be registered in Crime No.313 of 2025, which culminated in the filing of a final report and the taking of cognizance by the learned Judicial Magistrate No.III, Tirunelveli, resulting in C.C.No.2258 of 2025.



Case of the petitioner:

4. The petitioner has denied the allegations in toto and contended that he is lawfully operating brick kiln chambers after paying royalty and other statutory dues. It is his further case that he had applied for necessary permissions and that the criminal proceedings have been initiated due to mala fide and previous enmity with certain police officials. The petitioner has also alleged continuous harassment by the respondent police and has pointed out that another FIR has been registered against him by the same police station.

Grounds urged for quash:

5. The principal grounds urged by the petitioner are as follows:

(i) That the seizure and registration of FIR were carried out by a Head Constable, who is not authorised under Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957.

(ii) That the learned Judicial Magistrate lacked jurisdiction to take cognizance.

(iii) That there are no independent witnesses to the alleged occurrence.



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- (iv) That the ingredients of theft are not made out.
- (v) That the proceedings are vitiated by mala fide and abuse of process of law.

Submissions:

6. The learned counsel for the petitioner reiterated the grounds set out in the petition and submitted that continuation of the criminal proceedings would amount to abuse of process of law. It was contended that in view of the alleged violation of statutory procedure and lack of authorisation under the MMDR Act, 1957, the entire prosecution is liable to be quashed at the threshold.

7. The learned Government Advocate (Criminal Side) appearing for the respondent police submitted that the FIR and the final report disclose a *prima facie* case against the petitioner. It was contended that the issues raised by the petitioner involve disputed questions of fact which cannot be adjudicated in proceedings under Section 528 of BNSS, 2023. It was further contended that the legality of seizure, authorisation of the officer, and the petitioner's claim of valid



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permission are matters to be established during trial and not in a quash petition.

8. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for consideration:

9. Whether the petitioner has made out a case for exercise of inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the proceedings in C.C.No.2258 of 2025?

Analysis:

10. This Court has carefully considered the rival submissions and perused the materials placed on record. At the stage of considering a petition for quashment, this Court is required to examine only whether the allegations contained in the FIR and the final report, if taken at face value, disclose the commission of a cognizable offence. This Court cannot embark upon an appreciation of evidence or adjudicate disputed questions of fact.



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11. In the present case, the FIR and the final report specifically allege illegal excavation and removal of river sand using heavy machinery. Whether the petitioner possessed valid permission, whether royalty was paid, and whether the seizure was authorised are all matters requiring evidence and cannot be conclusively determined in proceedings under Section 528 of BNSS, 2023. The contention that the seizure was effected by an unauthorised officer and that the learned Magistrate lacked jurisdiction are mixed questions of law and fact, which can be effectively raised before the learned Trial Court at the appropriate stage.

12. It is also relevant to note that the present prosecution is for the offence of theft of river sand under Section 303(2) of the Bharatiya Nyaya Sanhita, 2023, corresponding to Section 379 IPC. The offence alleged is distinct and independent of offences under the MMDR Act.

13. It is now well settled by a Division Bench of this Court in Crl.OP(MD)No.13173 of 2011 etc. batch, that in cases involving theft of sand or minerals, the police are competent to register an FIR and



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investigate the offence of theft, even in the absence of proceedings under the MMDR Act. The embargo under Section 22 of the MMDR Act applies only to offences under the said Act and does not bar prosecution for theft under the Penal Code.

14. Therefore, the petitioner's contention that the FIR is vitiated for want of authorisation under the MMDR Act cannot be accepted at this stage, since the prosecution is for theft and not for contravention of the MMDR Act. The allegations of mala fide and prior enmity, though asserted, are not supported by unimpeachable materials warranting interference at the threshold. Mere allegation of mala fide, without clear and convincing evidence, is insufficient to quash criminal proceedings. This Court finds that the FIR and final report disclose the essential ingredients of the offence alleged and that the prosecution cannot be stifled at its inception.

15. In view of the above discussion, this Court is of the considered opinion that no case has been made out for exercising the inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.



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16. This Criminal Original Petition is dismissed. The proceedings in C.C.No.2258 of 2025 on the file of the learned Judicial Magistrate No.III, Tirunelveli, shall proceed in accordance with law. The petitioner is at liberty to raise all permissible grounds before the learned Trial Court. Consequently, the connected miscellaneous petitions are closed.

15.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

- 1.The Judicial Magistrate No.III,
Tirunelveli.
- 2.The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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