



Crl.OP(MD)No.21779 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).Nos.21779 of 2025

and

Crl.M.P.(MD)No.18694 of 2025

Biju @ Piju

... Petitioner / Accused No. 1

Vs.

1.State of Tamil Nadu,
Rep. by the Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari District.
(Crime No.609 of 2025)

... 1st Respondent / *Complainant*

2. Satheesh,

... 2nd Respondent /
De facto Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to Quash the FIR in Crime No. 609 of 2025 on the file of the 1st respondent police.

For Petitioner : Mr.T.Leninkumar

For R-1 : Mr.Thanga Aravindh.B,
Government Advocate (Crl. Side)



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ORDER

Preface:

This Criminal Original Petition is filed to quash the First Information Report in Crime No.609 of 2025, registered by the first respondent Police for the offence under Section 303(2) of the Bharatiya Nyaya Sanhita, 2023 (theft), in connection with alleged transportation of M-sand without producing a permit.

2. The petitioner contends that the FIR is an abuse of process, that the essential ingredients of “theft” are absent, and that in any event the manner of registration/investigation is vitiated because the value of the alleged stolen property is not stated, though the classification of the offence under the BNS depends upon value.

Case of the prosecution:

3. The case of the prosecution, as could be gathered from the impugned FIR, is that the police intercepted a vehicle allegedly carrying about four units of M-sand. Upon being required to produce the relevant transport permit / transit pass / documents, the driver allegedly failed to produce the same and is stated to have run away.



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On that premise, the first respondent Police registered the case for theft under Section 303(2) of the BNS, 2023.

4. The FIR, as placed before this Court, does not indicate (i) from whose possession the M-sand was allegedly removed, (ii) from which location/quarry it was allegedly stolen, (iii) whether any quarry owner / lawful possessor has complained of theft, and (iv) the value of the property, though the BNS schedule/classification makes value determinative for cognizability in certain situations.

5. *Grounds urged for quash:*

The petitioner urges, in substance, the following grounds:

(i) The FIR is ex facie illegal, lacking jurisdictional facts for theft.

(ii) The seized material is stated to be M-sand, typically produced by private quarries and in the absence of any complaint by the owner/lawful possessor, and in the absence of a narration as to dishonest removal from possession, the offence of theft is not made out.



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(iii) The FIR does not mention the value of the alleged stolen property, when the statutory classification makes value relevant, the omission is fatal, particularly if the offence is to be treated as non-cognizable, in which event investigation cannot proceed without the order of the Jurisdictional Magistrate.

(iv) Even assuming any infraction, the proper statutory route would fall within the regulatory regime under the Mines and Minerals (Development and Regulation) Act, 1957 and the relevant Rules, the invocation of “theft” is stated to be a colourable exercise.

Submissions:

6. The learned counsel for the petitioner submitted that the police action is founded merely on non-production of permit and the alleged conduct of the driver. According to the learned counsel, mere absence of permit cannot be equated to theft, unless the FIR discloses: (a) dishonest taking; (b) of movable property; (c) out of someone’s possession; (d) without consent; and (e) moving the property in order to such taking. It was further argued that under the BNS framework, in cases where the value is below Rs.5,000/-, the classification impacts cognizability, therefore, the police are



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bound to mention value in the FIR. Since the value is not stated, the investigation is vitiated, especially if no prior permission of the Magistrate has been obtained for investigating a non-cognizable offence.

7. The learned counsel for the petitioner also relied upon an order passed by this Court in an “identical” matter in Crl.O.P. (MD)No.16093 of 2025 wherein the FIR was quashed on two grounds: (i) absence of theft ingredients because the FIR was silent as to the source/possession from which the mineral/rough stone was taken; and (ii) absence of valuation in the FIR, rendering the registration/investigation unsustainable without Magistrate’s permission where the offence is treated as non-cognizable.

8. The learned Government Advocate (Crl. side) submitted that transportation of mineral without transit pass/permit is a serious issue; even private quarry operations rest on State regulation, and transport must be supported by lawful documents. It was submitted that the FIR mentions four units, and according to the prosecution, the value can exceed Rs.5,000/- (a submission was made that per



unit value could be assessed, and for four units it would cross the threshold).

9. It was further contended that the absence of permit and the conduct of fleeing may justify registration and investigation, at any rate, the State sought opportunity to produce valuation material / certificate during the course of proceedings.

10. ***Points for consideration:***

(i) Whether the allegations in the FIR, taken at face value, disclose the essential ingredients of the offence of theft under Section 303 of the BNS, 2023?

(ii) Whether failure to mention the value of the alleged stolen property in an FIR under Section 303(2) vitiates the registration/investigation, especially where the statutory classification is value-sensitive?

(iii) Whether the dispute/allegation, even if accepted, is more appropriately dealt with under the MMDR Act, 1957 and the Rules,



rather than by invoking “theft”, and what consequential directions are warranted?

Analysis:

11. It is well settled that while the power to quash is to be exercised sparingly, the High Court can and ought to interdict criminal proceedings where the uncontroverted allegations do not disclose any offence, or where the proceedings amount to abuse of process. The principles in ***State of Haryana v. Bhajan Lal***¹ continue to guide such exercise, including the category where the FIR does not disclose a cognizable offence or fails to disclose the commission of any offence even if accepted in entirety. Equally, the Court must be cautious not to embark upon a mini trial at the stage of quashing. The test is whether, on the plain reading of the FIR and accompanying materials, the ingredients of the alleged offence are made out, and whether continuation of proceedings would be unjust.

12. The statutory conception of theft (in substance) requires dishonest taking of movable property out of the possession of any person without consent and moving it in order to such taking. In the

¹ (1992) AIR SC 604



case on hand, the FIR, as placed before this Court, alleges interception of a vehicle carrying M-sand, and failure to produce permit, coupled with the alleged conduct of the driver running away. Significantly, the FIR does not disclose:

- (a) from whose possession the M-sand was removed;
- (b) wherefrom it was taken;
- (c) any assertion that it was dishonestly removed from a quarry owner/government stock/any lawful possessor; or
- (d) any complaint by an identifiable victim alleging that his property was stolen.

13. Mere inference that goods carried without permit “must be stolen” cannot substitute the foundational averments constituting theft. At the FIR stage, the Court is not called upon to assume missing ingredients; the prosecution must at least disclose the minimal facts that, if proved, would amount to theft.

14. When the material involved is M-sand, which is ordinarily manufactured/produced by authorised private units (subject to regulatory framework), a case of theft would still require the



prosecution to assert the source and the person/entity from whose possession it was taken dishonestly. In the absence of such foundational facts, the invocation of Section 303(2) is rendered legally fragile.

15. The prosecution argument that valuation can be produced later does not cure the more basic defect. The FIR itself is silent on the core theft narrative, namely, the act of dishonest removal from a specific possession without consent.

16. The petitioner has specifically raised the contention that under the BNS scheme, value plays a role in classification, and that where the value of stolen property is less than Rs.5,000/-, the nature of police power and procedure is materially impacted.

17. In the present FIR, the value of the property is not stated at all. The prosecution attempted to argue that “four units” would exceed Rs.5,000/- by computation. This Court is unable to accept such a submission as a substitute for statutory compliance at the stage of registration, for the following reasons:



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(i) The FIR cannot be sustained on post facto arithmetic not reflected in the complaint/FIR.

(ii) The unit-wise valuation is not a matter of judicial notice and would vary depending on locality, source, and material type.

(iii) Where classification impacts procedural jurisdiction, the police must reflect at least the basic valuation assertion in the FIR, instead of leaving it open-ended.

18. More importantly, the present prosecution seeks to proceed on an FIR for theft where the most essential narrative, “stolen from X / removed from Y quarry/stock” is absent. Once the foundational theft ingredients are missing, the question of “value threshold” becomes secondary, nevertheless, the omission further reinforces the conclusion that the FIR was registered in a casual manner.

19. The learned Government Advocate (Crl. side) emphasised the regulatory nature of mining and transport and the requirement of transit pass. This Court is in agreement that mineral transportation without compliance is a serious concern. However,



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seriousness of the issue cannot justify application of an offence whose essential ingredients are not pleaded.

20. Where the allegation is essentially transport without permit / transit pass, the appropriate statutory route ordinarily lies under the MMDR Act, 1957, and the Rules framed thereunder, subject to the restrictions contained therein as regards cognizance and competent complaint. The police cannot short-circuit the statutory scheme by invoking theft absent the foundational allegations that constitute theft.

21. This Court is also mindful that the Supreme Court in the context of illegal sand mining has recognised that IPC offences (including theft) may, in appropriate cases, be attracted depending on facts, particularly where minerals are removed from Government land/riverbed and dishonest removal from possession can be alleged and established. But that principle cannot be applied mechanically to every “permit-less transport” case, especially where the FIR is silent on the source and possession.



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22. The petitioner has produced an earlier order of this Court in CrI.O.P.(MD)No.16093 of 2025 wherein on similar reasoning, (i) absence of allegation as to wherefrom the property was taken dishonestly and (ii) non-mention of value in the FIR under Section 303(2) was quashed.

23. This Court finds the reasoning persuasive on the facts of this case as well, since the defects highlighted therein are present here in material particulars.

24. On a plain reading of the FIR in Crime No.609 of 2025, even if the allegations are taken at their face value and accepted in entirety, this Court is of the considered view that the ingredients of theft under Section 303 of the BNS, 2023 are not disclosed, since the FIR does not state the source of the M-sand, the identity of the lawful possessor, or the act of dishonest removal from possession without consent.

25. The FIR also does not mention the value of the alleged stolen property, despite value having statutory relevance in



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classification. The prosecution's attempt to fill the gaps by subsequent valuation assertions cannot cure the foundational infirmities at the stage of registration.

26. Before parting, this Court observes that statutory regulation of mineral transport is vital. However, enforcement must be undertaken within the boundaries of the appropriate enactment and procedure. Registration of FIRs for “theft” without foundational pleadings regarding possession, source, and dishonest taking not only weakens legitimate enforcement but also burdens the criminal justice system with proceedings that are vulnerable at the threshold.

27. Therefore, allowing the investigation to proceed on the present FIR would amount to an abuse of process of law.

28. In the result, this Criminal Original Petition is allowed. The FIR in Crime No.609 of 2025 on the file of the Inspector of Police, Aralvoimozhi Police Station, Kanyakumari District, registered for the offence under Section 303(2) of the Bharatiya Nyaya Sanhita, 2023, is quashed.



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29. It is made clear that this order will not preclude the competent authority from proceeding, if so advised, in accordance with law under the Mines and Minerals (Development and Regulation) Act, 1957 and the applicable Rules, strictly in the manner known to law. Consequently, the connected miscellaneous petition is closed.

15.12.2025

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

To

- 1.The Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari District..
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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