



Crl.OP(MD)No.22120 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22120 of 2025

and

Crl.M.P.(MD)Nos.19036 and 19038 of 2025

1.Prakash

2.Bashir Ahamed

3.Gopi

4.Pandian

... Petitioners

Vs.

1.The State of Tamilnadu,
Rep. by the Inspector of Police,
Kandavarayanpatti Police Station,
Sivagangai District.
(PCR No.18 of 2025)

2.Ganesh Krishna Kumar

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records in P.R.C.No.18/2025 on the file of the learned Principal District Munsif cum Judicial Magistrate Court, Thiruppathur, and quash the charge sheet as against the petitioner herein.

For Petitioner : Mr.R.Ilayaraja

For R-1 : Mr.S.Ravi,
Additional Public Prosecutor



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Crl.OP(MD)No.22120 of 2025

ORDER

Preface:

This Criminal Original Petition is filed under Section 482 Cr.P.C., 1973, seeking to call for the records relating to the charge sheet in P.R.C.No.18 of 2025 on the file of the learned Principal District Munsif-cum-Judicial Magistrate Court, Thiruppathur, and to quash the same, insofar as the petitioners are concerned, where the final report has been laid for the offences punishable under Section 303(2) of the Bharatiya Nyaya Sanhita, 2023 (theft) and Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as, “MMDR Act”). The petitioners also seek a consequential interim relief for dispensing with personal appearance in P.R.C.No.18 of 2025 pending disposal of the main petition.

Case of the Prosecution:

2. The prosecution case, in substance, is that on 15.02.2025 at about 20:00 hours, while the *de-facto* complainant and another official were on patrol near Maangudi, they allegedly found the petitioners engaged in illegal extraction/removal of sand without lawful permit. It is alleged that the sand was being removed from the



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land stated to be owned by Abbas (father of the 2nd petitioner) by using an earth mover/JCB bearing Registration No. TN 79 F 7689 (stated to be owned by the 2nd petitioner) and transported using (i) lorry bearing Registration No. TN 55 X 4746 (stated to be owned by the 2nd petitioner), (ii) lorry bearing Registration No. TN 63 P 4217 (stated to be owned by the 4th petitioner), and (iii) TATA SFC bearing Registration No. TN 76 L 5792 (stated to be owned by the 2nd petitioner).

3. The final report proceeds on the premise that (i) the 1st and the 4th petitioners operated the heavy vehicles with about 2½ units of sand each, (ii) the 2nd petitioner operated the small commercial vehicle with about 1 unit of sand, and (iii) the 3rd petitioner operated the earth mover for removal of sand without permission. The loss to Government is quantified at Rs.14,477/- (Rupees Fourteen Thousand Four Hundred and Seventy Seven only). On these allegations, the police have laid a final report for theft (now reflected as Section 303(2) BNS, 2023) and for contravention punishable under Section 21(4) of the MMDR Act.



Grounds for Quash:

4. The petitioners deny the allegations and contend that the case is an abuse of process. The principal grounds urged are:

(i) Bar of cognizance under the MMDR Act: By virtue of the statutory scheme, cognizance for offences under the MMDR Act can be taken only on a complaint by an authorised officer, and not on a police final report. Therefore, the inclusion of Section 21(4) MMDR Act in the final report and cognizance thereon are contended to be illegal.

(ii) No theft where the land is patta land and removal is for agricultural purpose: The 2nd petitioner asserts that the subject land stands in his name, that he is an agriculturist, and that the removal was only incidental to agricultural development activities, including for horticulture/drip irrigation benefits. It is submitted that “theft” requires dishonest taking of property out of the possession of another without consent; where the activity is within one’s patta land and for bona fide agricultural use, theft is not made out.

(iii) Vagueness / absence of essential ingredients: The charge sheet is attacked as vague, lacking material particulars regarding any past sale, commercial intent, or dishonest intention. The



petitioners also relied upon Rule 17 of the relevant Tamil Nadu Minor Mineral Rules (as cited at the Bar), to contend that minor minerals on a small scale may be quarried free of charge for one's own bona fide domestic/agricultural purposes, subject to conditions.

Submissions:

5. The learned counsel for the petitioners submitted that the petition is posted for orders after filing of additional documents, namely:

- (a) Patta transfer order showing the land stands in the name of the 2nd petitioner;
- (b) Farmer certificate issued by the Tahsildar; and
- (c) documents relating to horticulture / drip irrigation scheme benefits.

6. On the MMDR charge, the learned counsel for the petitioners submitted that the law is settled that the police cannot file a final report for MMDR offences and that the learned Magistrate cannot take cognizance unless a complaint is filed by an authorised officer as contemplated by the Act. On the theft charge, the learned



counsel argued that theft (earlier Section 379 IPC read with Section 378 IPC; now reflected in BNS provisions) requires dishonest taking out of the possession of another without consent.

7. According to the learned counsel, the very “possession of another” element is absent where the alleged removal is from the petitioner’s own patta land for agricultural use. Reliance was placed upon decisions including the principles stated by the Hon’ble Supreme Court in **State (NCT of Delhi) v. Sanjay**¹, and the approach in certain decisions of this Court dealing with removal from patta lands and the scope of the Minor Mineral Rules. The learned counsel further submitted that the final report does not contain a clear allegation of commercial sale, and that the agricultural purpose is supported by official certificates.

8. The learned Additional Public Prosecutor opposed the petition and submitted, *inter alia*, that:

(i) Even if the land is patta land, minerals vest in the State, and removal/transportation without prior permission attracts penal consequences;

¹ (2014) 9 SCC 772



Crl.OP(MD)No.22120 of 2025

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(ii) Rule 17 speaks of quarrying on a “small scale” and for bona fide domestic/agricultural use; the present case involved multiple vehicles and an earth mover, hence it is not “small scale”;

(iii) Materials in the case diary, including statements, indicate that the sand was intended to be unloaded elsewhere, suggesting commercial purpose;

(iv) The petition raises disputed facts not fit for adjudication under Section 482 Cr.P.C., 1973.

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

Point for Consideration:

10. The following points arise for consideration:

(i) Whether the inclusion of Section 21(4) MMDR Act in the police final report and the cognizance taken thereon in P.R.C.No.18 of 2025 are vitiated in law in view of the statutory bar as to cognizance?



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(ii) Whether the allegations, even if taken at face value, make out the offence of theft under Section 303(2) BNS, 2023, or whether continuance of proceedings would amount to abuse of process warranting interference under Section 482 Cr.P.C.?

Analysis:

11. The MMDR Act is a special enactment governing regulation of mines and minerals. The statute contemplates a specific mechanism for initiating prosecution for contraventions under the Act, and cognizance by a criminal Court is conditioned upon a “complaint” by a person authorised in that behalf under the Act. The legal position has been consistently reiterated that while the police may act in aid of preventing illegal mining/removal and may proceed in accordance with law for cognisable offences under the general penal law where made out, cognizance for MMDR offences cannot be founded upon a police report contrary to the statutory mandate.

12. The decisions of the Hon’ble Supreme Court, including ***State (NCT of Delhi) v. Sanjay***², and later pronouncements explaining the MMDR framework, have recognised this distinction.

² (2014) 9 SCC 772



With respect to the offences under MMDR Act, the Hon'ble Division Bench of this court in **Senegal & others vs State**³ has held as follows:

“46. In view of the foregoing discussions, we answer the questions referred to us as follows:-

(i) Since, the offences under the Indian Penal Code involved in the cases before us and an offence under Section 21 of the Mines and Minerals [Development and Regulation] Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals [Development and Regulation] Act will not exclude the provisions of IPC. Therefore, in respect of sand theft, it will be lawful for the police to register a case as provided in Section 154 Cr.P.C., under Section 379 and other relevant provisions of IPC, investigate the same as per the provisions of the Code of Criminal Procedure and to lay a final report under Section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore, such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed.

³ 2012 (2) CTC 369



Crl.OP(MD)No.22120 of 2025

(ii) If an act of the accused constitutes offences under Indian Penal Code as well as the provisions of the Mines and Minerals [Development and Regulation] Act, the registration of a case both under the provisions of Indian Penal Code and the Mines and Minerals [Development and Regulation] Act is not illegal and the police may proceed with the investigation. However, the police shall file a police report only in respect of the offences punishable under the Indian Penal Code and in respect of the offences punishable under the Mines and Minerals [Development and Regulation] Act, he may file a separate complaint, provided he has been authorised under Section 22 of the said Act.

(iii) In any event, if the police officer, files a final report in respect of offences under IPC as well as under Section 21 of the Mines and Minerals [Development and Regulation] Act , the Magistrate may take cognizance of the offences under IPC alone and proceed with the trial.

(iv) In respect of offences under the Mines and Minerals [Development and Regulation] Act , the court shall take cognizance only on a complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a police report.



Crl.OP(MD)No.22120 of 2025

(v) In the State of Tamil Nadu, so long as the notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006 authorising the Inspectors of Police to file complaints under Section 22 of the Mines and Minerals Act, is in force , on completing the investigation in respect of the offence under section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a complaint under Section 22 of the Mines and Minerals Act before the jurisdictional Magistrate, upon which the Magistrate may take cognizance.”

13. Section 22 of the Mines and minerals Act reads as follows:

"22. Cognizance of offences.-No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.”

14. Tested on the above principle, insofar as P.R.C.No.18 of 2025 proceeds on a final report laid by the police for Section 21(4) of



the MMDR Act, the said prosecution is not maintainable unless the proceedings are founded upon a complaint by the competent authorised officer as required by law. Therefore, the proceedings in P.R.C.No.18 of 2025, insofar as they relate to Section 21(4) of the MMDR Act, are liable to be quashed.

15. The offence of theft, in its essential ingredients, requires: (a) dishonest intention; (b) moving of movable property; (c) taking the property out of the possession of another person; and (d) without that person's consent. It is equally well settled that where illegal removal of minerals is from Government land or from areas where possession/ownership is not with the accused, a theft offence may, depending on facts, be attracted and investigated by the police (as explained in ***State (NCT of Delhi) v. Sanjay***⁴. At the same time, the inherent jurisdiction under Section 482 Cr.P.C., 1973, can be exercised where the allegations, even if accepted in entirety, do not constitute the offence alleged, or where continuation of proceedings would amount to abuse of process.

⁴ (2014) 9 SCC 772



16. In the present case, the record placed before this Court and the submissions at the Bar disclose the following features which weigh with this Court:

(a) The prosecution narrative itself refers to removal from land stated to be connected to the 2nd petitioner's family. The petitioners have placed additional documents (patta transfer order, farmer certificate, horticulture/drip irrigation benefit documents) to show agricultural character and possession of the land.

(b) The gravamen of the prosecution appears to be removal/transport of sand without lawful permit. Such contravention, on facts, is fundamentally within the regulatory domain of the MMDR framework and the relevant Rules.

(c) The learned Additional Public Prosecutor urged commercial scale (multiple vehicles/JCB) and referred to statements suggesting unloading elsewhere. However, at the hearing, the Court's attention was drawn to the typed set where only seizure mahazar was available, and the Court noted the absence of observation mahazar/rough sketch in the set placed. The aspect of seizure of



Crl.OP(MD)No.22120 of 2025

sand from vehicles at the spot, as argued, is not borne out with clarity from the material produced before this Court in the present proceedings.

17. Importantly, where the special law prescribes the mechanism for prosecution and where the allegation substantially concerns regulatory breach, Courts have repeatedly cautioned against dressing up such regulatory breaches as theft in a manner that defeats the statutory safeguards of the special enactment.

18. At this juncture, it would be useful to extract the relevant portion of the judgment of this court in Crl.O.P.(MD)No.13948 of 2019 dated 23.02.2022 which is as follows:

“7.According to the prosecution, even though the survey No.47/12 belongs to the father of the 2nd petitioner, even though taking the sand from the above said land, as per the Rules and Provisions of the Tamil Nadu Mines and Minerals Development Regulation Act, 1947, proper permission is required. But this contention on the part of the prosecution is not acceptable.



Crl.OP(MD)No.22120 of 2025

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8. We can straightway go to Rule 17 of TAMIL NADU MINOR MINERAL CONCESSION RULES, 1959, which reads as follows:-

“17. Quarrying by the Owner:- A registered holder may quarry free of charge any minor mineral on a small scale for his own use for a specific bonafide domestic or agricultural purpose, provided that he has 4/7 <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.13948 of 2019 no intention of continuing quarrying operations indefinitely and provided further that the land is not in any way rendered less fit for cultivation than before.”

9. So from the above said Rule, it is seen that the owner of the patta land is entitled to quarry the sand for his domestic purpose. It is also mentioned in the official memorandum of the Thasildhar, Thiruppuvanam that the sand has been taken for the purpose of using the domestic activity. So, Rule 17 clearly bars the prosecution.”

19. On a careful consideration of the totality of circumstances, this Court is of the view that permitting the prosecution for theft to proceed on the present material would result in the petitioners being



Crl.OP(MD)No.22120 of 2025

put to a criminal trial without the foundational ingredient being prima facie established on the record placed, especially when the principal MMDR prosecution itself is legally unsustainable on a police final report.

20. This Court makes it clear that this order is rendered on the peculiar facts and the record placed before this Court in this petition and shall not be treated as a blanket licence for unauthorised mining/quarrying. If the competent authority is of the view that there is contravention of the MMDR Act/Rules, it is always open to the authority to proceed strictly in accordance with law by adopting the procedure contemplated under the special statute.

21. In view of the above, the continuation of proceedings in P.R.C.No.18 of 2025 against the petitioners would amount to abuse of the process of Court and is liable to be interdicted under Section 482 Cr.P.C., 1973.

22. In the result, this Criminal Original Petition is allowed. The proceedings in P.R.C.No.18 of 2025 on the file of the learned



Crl.OP(MD)No.22120 of 2025

Principal District Munsif-cum-Judicial Magistrate Court,
Thiruppathur, arising out of the final report for offences under
Section 303(2) of BNS, 2023 and Section 21(4) of the MMDR Act,
1957, are quashed, insofar as the petitioners/accused are
concerned. Consequently, the connected miscellaneous petitions
stand closed. In view of the quashment, the petitioners' personal
appearance in P.R.C.No.18 of 2025 stands dispensed with.

15.12.2025

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

To

- 1.The Judge,
The Principal District Munsif cum
Judicial Magistrate Court,
Thiruppathur.
- 2.The Inspector of Police,
Kandavarayanpatti Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.OP(MD)No.22120 of 2025

L.VICTORIA GOWRI, J.

Sml

CRL OP(MD)No.22120 of 2025

15.12.2025