



Crl.OP(MD)No.21908 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.21908 of 2025

and

Crl.M.P.(MD)Nos.18824 and 18827 of 2025

1. Vadivel

2. Ravi

3. Uikkattan

4. Chinnadurai

5. Perumal

6. Ramasamy

... Petitioners

Vs.

1.State of Tamilnadu,
Rep by Inspector of Police,
Kovilpatti West Police Station,
Thoothukkudi District.
(Crime no.375/2018)

2.Essaki Raja

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the entire records pertaining to the case in C.C. No.368 of 2018 on the file of the learned Judicial Magistrate-II, Kovilpatti, Thoothukkudi, and quash the same.



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For Petitioner : Mr.A.Velmurugan

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

ORDER

Criminal Original Petition filed under Section 482 Cr.P.C. (corresponding to Section 528 of BNSS, 2023), to call for the records in C.C.No.368 of 2018 on the file of the learned Judicial Magistrate, Kovilpatti, Thoothukudi District, and quash the same as against the petitioners.

Preface:

2. The inherent jurisdiction of this Court is intended to prevent abuse of process and to secure the ends of justice. It is not an appellate forum to assess the probative worth of the prosecution materials. Yet, where a prosecution is demonstrably barred by a statutory embargo, or where the Court taking cognizance lacks jurisdiction, this Court will be justified in interdicting such proceedings at the threshold.



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3. The present petition concerns a prosecution arising out of an alleged seizure of sand carried in four lorries on 03.08.2018, and the consequent prosecution for Section 379 IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (“MMDR Act”).

Case of the prosecution:

4. The prosecution case, in sum, is that on 03.08.2018 at about 16.30 hours, at Innammanniachi Junction, Kovilpatti, a vehicle check was conducted by the police. Four lorries bearing Registration Nos. TN69 AD 4951, TN72 AC 0019, TN72 AM 1134 and TN72 AK 8417 were intercepted. It is alleged that the sand transported in the said vehicles was without valid authorisation/permits and therefore constituted illegal transportation of a mineral, apart from amounting to theft of sand. The vehicles were seized, an FIR was registered for Section 379 IPC, and thereafter a final report was filed adding Section 21(1) of the MMDR Act. The petitioners are shown as Accused No.1 and 3 to 7. The allegation, as pleaded by the petitioners, is that Accused No.1 to



4 were allegedly involved in transportation, and Accused 5 to 7 are alleged to have instructed them.

Case of the petitioners:

5. The petitioners contend, *inter alia*, as follows:

(i) The prosecution is actuated by mala fides, attributable to alleged “extraneous demands” said to have been made by the second respondent, and refusal thereof.

(ii) In view of Section 22 of the MMDR Act, no Court can take cognizance of an offence under the MMDR Act except upon a complaint in writing by an officer authorised by the Government. Hence, a police report/final report cannot be the foundation for cognizance under Section 21(1) of the MMDR Act, and the inclusion of that offence and cognizance thereon are void.

(iii) The petitioners claim that they possessed valid transit permits at the time of inspection, therefore, the ingredients of theft/dishonesty are not made out.

(iv) The second respondent, who is stated to be the *de-facto* complainant, has “stepped into the shoes of the Investigating



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Officer”; according to the petitioners, this vitiates the investigation and taints the entire prosecution.

Submissions:

6. The learned counsel for the petitioners reiterated that the cognizance for Section 21(1) MMDR Act cannot be taken on a police final report. The officer who set the criminal law in motion is also stated to have investigated, rendering the process unfair, and valid transit pass has not been considered.

7. The learned Government Advocate (Crl. Side) submitted that even if this Court were to quash the MMDR count, the petitioners must face trial for Section 379 IPC, as theft is clearly attracted on the prosecution version. It was also submitted that the police are competent to register and investigate the offence of theft.

8. During hearing, the Court indicated that the prosecution cannot proceed for “both” in the manner cognizance has been taken, and that at best, the IPC offence may survive, subject to law.



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

10. *Points for determination:*

The following points arise for consideration:

(a) Whether cognizance and continuation of proceedings for Section 21(1) MMDR Act in C.C.No.368 of 2018 are barred in view of Section 22 MMDR Act?

(b) Whether the proceedings for Section 379 IPC are liable to be quashed at the threshold on the grounds urged, including the plea of valid transit permits and alleged bias in investigation?

(c) What consequential directions are necessary?

Analysis:

11. Section 22 of the MMDR Act imposes a specific embargo that, no Court shall take cognizance of any offence punishable under the MMDR Act or rules made thereunder except upon a complaint in writing by a person authorised by the Central/State Government.



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This statutory command is not a matter of procedural irregularity, but it goes to the very competence of the Court to take cognizance for offences under the MMDR Act on a police report.

12. In the case on hand, the materials placed and the pleadings of the petitioners show that the MMDR offence was added in the final report and cognizance has been taken in the calendar case. There is nothing shown to this Court, at this stage, to demonstrate that a complaint in writing by an authorised officer, in the manner contemplated by Section 22, formed the foundation for taking cognizance for Section 21(1) of the MMDR Act.

13. Therefore, the prosecution, insofar as it relates to Section 21(1) MMDR Act, cannot be permitted to continue in the present form, and the cognizance taken for that offence in C.C.No.368 of 2018 is liable to be interfered with.

14. The offence of theft under Section 379 IPC is distinct in its ingredients. The question whether the sand was transported pursuant to lawful authority/permit; whether it was lawfully



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excavated; whether the petitioners had dishonest intention; and whether the prosecution can establish the requisite *mens rea* are matters that ordinarily turn on evidence.

15. The petitioners rely heavily on the plea that they possessed valid transit permits. At the stage of quash, this Court does not conduct a mini-trial. Unless the permit documents are of unimpeachable character and conclusively demolish the prosecution story, the matter must proceed to trial.

16. As regards the submission that the *de-facto* complainant and the Investigating Officer are “one and the same”, this Court is not persuaded to quash the entire IPC prosecution solely on that assertion, for two reasons:

(i) Firstly, in many prosecutions arising out of policing activity, the informant may be a police officer. The legality of investigation, and whether any prejudice is caused, will depend upon the facts, the record of investigation, and the manner in which evidence is collected.



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(ii) Secondly, even assuming there is an infirmity in investigation, it does not automatically obliterate the prosecution at inception and the Court is empowered to assess, at the appropriate stage, whether any prejudice is caused and what consequence follows.

17. The petitioners will be at liberty to: (a) rely on the transit permits and other contemporaneous documents during trial; (b) cross-examine the prosecution witnesses on the genuineness, validity, and relevance of such permits and (c) raise all legally permissible objections including as to fairness of investigation.

18. Consequently, while the statutory bar under Section 22 MMDR Act warrants interference with the MMDR count, this Court finds no ground to quash the proceedings insofar as Section 379 IPC is concerned, at the threshold.

19. The MMDR Act contains a specific gateway for prosecution through authorised complaints. Courts must honour that legislative design. At the same time, where the prosecution alleges a distinct



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IPC offence such as theft, the criminal law may take its course, subject to proof and defences in trial. The balance lies in enforcing the statutory bar where it squarely applies, without stifling a triable IPC allegation at inception.

20. In the result, this Criminal Original Petition is partly allowed.

21. The proceedings in C.C.No.368 of 2018 on the file of the learned Judicial Magistrate, Kovilpatti, Thoothukudi District, are quashed insofar as they relate to the offence under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, and the cognizance taken for the said offence shall stand set aside.

22. The proceedings in C.C.No.368 of 2018 shall continue for the offence under Section 379 IPC (and for any other IPC offence, if any, which is otherwise legally maintainable on the materials), in accordance with law.



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23. The petitioners are at liberty to raise all defences available in law, including reliance on transit permits and objections relating to investigation, before the trial Court at the appropriate stage.

24. Considering the nature of the case and the number of accused, the learned Judicial Magistrate is directed to consider any application filed by the petitioners for dispensation of personal appearance / exemption from appearance, in accordance with law, and to proceed with the trial expeditiously. Consequently, connected miscellaneous petitions are closed.

02.01.2026

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

To

- 1.The Judicial Magistrate-II,
Kovilpatti, Thoothukudi.
- 2.The Inspector of Police,
Kovilpatti West Police Station,
Thoothukkudi 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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