

The State Through Vs. The Learned Judicial Magistrate,

The State Through Vs. The Learned Judicial Magistrate,

SooperKanoon Citation : sooperkanoon.com/63369

Court : Chennai

Decided On : Jul-29-2015

Judge : M.M.Sundresh

Appellant : The State Through

Respondent : The Learned Judicial Magistrate,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

29. 07.2015 CORAM THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
Crl.O.P.(MD)Nos.14782 of 2015 to Crl.O.P.(MD)No.17484 of 2015
Crl.O.P.(MD)No.14782 of 2015: The State Through The Deputy Superintendent of
Police, Anti Land Grabbing Special Cell, Madurai District. .. Petitioner Vs. The
learned Judicial Magistrate, Melur, Madurai District. .. Respondent PRAYER
Criminal Original Petition is filed under Section 482 of the Code of Criminal
Procedure, to direct the learned Judicial Magistrate, Melur to take cognizance of
the offences in respect of the final report filed by the Investigation Officer in Crime
No.365 of 2013 and commit the case to Court of Sessions in accordance with law.
Crl.O.P.(MD)No.14783 of 2015: The State Through The Inspector of Police,
Virudhunagar Rural P.S(Crime) Virudhunagar district, on other duty at DCB,
Madurai District. .. Petitioner Vs. The learned Judicial Magistrate, Melur, Madurai
District. .. Respondent PRAYER Criminal Original Petition is filed under Section
482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate,

Melur to take cognizance of the offences in respect of the final report filed by the Investigation Officer in Crime No.409 of 2012 and commit the case to Court of Sessions in accordance with law. CrI.O.P.(MD)No.14784 of 2015: The State Through The Deputy Superintendent of Police, District Crime Record Bureau, Madurai District. ..Petitioner/Investigation Officer Vs. The learned Judicial Magistrate, Melur, Madurai District. .. Respondent PRAYER Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate, Melur to take cognizance of the offences in respect of the final report filed by the Investigation Officer in Crime No.166 of 2012 and commit the case to Court of Sessions in accordance with law. !For Petitioner in all Petitions :Mr.S.Shanmuga Velayutham Public Prosecutor Assisted by Mr.K.Anbarasan, Govt.Advocate. For Respondent :No Appearance :COMMON

ORDER

All these petitions have been filed by the petitioner against the order passed by the learned Judicial Magistrate, Merur, by which the final report filed was returned stating that the only offence under Section 21(1) MMDR Act alone is made out and for that, a separate complaint under the Act is necessary. The learned Judicial Magistrate, Melur, while returning the final report, assigned the following reasons: " The Deputy Superintendent of Police, District Crime Branch, Madurai resubmitted the Charge Sheet as per the direction of the Honourable Chief Judicial Magistrate, Madurai, in his order in R.O.C.No.1258/15/A1 dt.18.03.15. The Charge Sheet was returned on 13.11.14 and endorsed to that effect. The Charge Sheet disclosed the fact that the accused are conducting mining operation. But they violated the license which issued by the authority and taking granite blocks from adjacent Promboke lands with intention of getting unlawful gain and stored the said blocks on the Harijana grave yard. Regarding the nuisance RDO has power to take action U/S133Cr PC and for the encroachment also. Revenue Officials are having power to evict the encroachment. There is no doubt that the accused is having licence for conducting mining operation. The statements and materials disclosed that the accused only stored granite in the said blocks on the Harijana grave yard and there is no ingredients regarding the offence under SC/ST Act and for forgery document. On the other hand, the Apex Court gave a findings in their judgment in Sanjay-Vs-State of NCT, Delhi that the cognizance of offence regarding the

violation of mining operations can only be taken with a complaint from the authority along with the Charge Sheet. Considering the facts and materials of this Charge sheet, the view of this Court is that the offence under Section 21(1) MMDR Act only made out and shall be taken cognizance with the separate complaint along with this charge sheet. There is no separate complaint from the authority. Hence, the Charge Sheet is returned."

2. The learned Public Prosecutor appearing for the petitioner submitted that the charges relating to the offences under the TNPPDL Act and the Explosive Substances Act and Section 304(2) Explosive Substances Act, were dropped by the Sessions Court. Therefore, the learned Judicial Magistrate, Melur, does not have any jurisdiction. Secondly, it is submitted that the final report indicates the material for the other offences under the Indian Penal Code and hence, the learned Judicial Magistrate, Melur, has totally misconstrued the decision of the Honourable Apex Court in State (NCT of Delhi) -vs- Sanjay reported in (2014) 9 SCC772 In fact, the ratio laid down in the said decision if applied afore to the case on hand, it would make the learned Judicial Magistrate to commit the cases to the Sessions Court. Merely because, the offences were made out a case only under the special enactment, when it is made out under the provisions of IPC, then the jurisdiction of the police is not taken away as laid down by the judgment cited supra. He further submits that it has been brought to the knowledge of the learned Judicial Magistrate that a separate complaint would be given under the Special Act, namely MMDR Act as indicated in the charge sheet. In support of his contention, the learned Public Prosecutor relied on the following judgments: In State (NCT of Delhi) -vs- Sanjay reported in (2014) 9 SCC772 the Honourable Apex Court in paragraphs 72 and 73 held as follows:. "72..... 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 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 Cr.PC before a Magistrate having jurisdiction for

the purpose of taking cognizance as provided in Section 190(1) (d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-a-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 the 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."

Considering the role of the Magistrate in committal of cases of exclusively by the Court of Session, it has been held in Sanjay Gandhi -Vs- Union of India and others reported in (1978) 2 SCC39 and paragraph '3' reads as follows: "3. Secondly, it is not open to the committal Court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. Therefore, to hold that he can go into the merits even for a prima facie satisfaction is to frustrate the Parliament's purpose in re-moulding Section 207A (old Code) into its present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully if interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order. In our view, the narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. Assuming the facts to be correct as stated in the police report, if the offence is plainly one under Section 201 IPC, the Magistrate has simply to commit for trial before the Court of Session. If by error, a wrong section of the Penal Code

is quoted, he may look into that aspect. Shri Mulla submits if the Magistrate's jurisdiction were to be severely truncated like this the prosecution may stick a label mentioning a sessions offence (if we may use that expression for brevity's sake) and the accused will be denied a valuable opportunity to prove his ex-facie innocence. There is no merit in this contention. If made up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under Section 227 Cr.P.c to discharge the accused. This provision takes care of the alleged grievance of the accused."

Similarly, in *Ajay Kumar Parmar -vs- State of Rajasthan* reported in (2012) 12 SCC406 the Honourable Apex Court was pleased to hold in paragraph 15 to 17 thus:-

"0. Thus, we are of the considered opinion that the Magistrate had no business to discharge the appellant. In fact, Section 207-A in the old Cr.P.C., empowered the Magistrate to exercise such a power. However, in the Cr.P.C. 1973, there is no provision analogous to the said Section 207-A. He was bound under law, to commit the case to the Sessions Court, where such application for discharge would be considered. The order of discharge is therefore, a nullity, being without jurisdiction.

11. More so, it was not permissible for the Judicial Magistrate, Sheoganj, to take into consideration the evidence in defence produced by the appellant as it has consistently been held by this Court that at the time of framing the charge, the only documents which are required to be considered are the documents submitted by the investigating agency alongwith the charge- sheet. Any document which the accused want to rely upon cannot be read as evidence. If such evidence is to be considered, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. The provision about hearing the submissions of the accused as postulated by Section 227 means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. Even if, in a rare case it is permissible to consider the defence evidence, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted, the instant

case does not fall in that category. (Vide: State of Orissa v. Debendra Nath Padhi, AIR 2003 SC1512 State of Orissa v. Debendra Nath Padhi, AIR 2005 SC359 S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., AIR 2005 SC3512 Bharat Parikh v. C.B.I. & Anr., (2008) 10 SCC109 and Rukmini Narvekar v. Vijaya Satardekar & Ors., AIR 2009 SC1013 12. The court should not pass an order of acquittal by resorting to a course of not taking cognizance, where prima facie case is made out by the Investigating Agency. More so, it is the duty of the court to safeguard the right and interests of the victim, who does not participate in discharge proceedings. At the stage of application of Section 227, the court has to shift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. Thus, appreciation of evidence at this stage, is not permissible. (Vide:P. Vijayan v. State of Kerala & Anr., AIR 2010 SC663 andR.S. Mishra v. State of Orissa & Ors., AIR 2011 SC1103.)"

3. A perusal of the records would show that the offences under the Indian Penal Code are made out. One of the allegations is that the accused persons have committed theft by entering upon the Government lands and indulged in mining operations without validity. Thus, a prima facie case under Section 379 IPC is made out. As rightly submitted by the learned Public Prosecutor, the learned Judicial Magistrate, Melur, has wrongly applied the ratio laid down by the Honourable Apex Court judgment in State (NCT of Delhi) -vs- Sanjay reported in (2014) 9 SCC772 In the said decision, the Honourable Apex Court was pleased to hold in clear terms that when the separate offences are made out, there is no bar for police to file the final report in each case and the Magistrate is bound to take on file and proceed with the committal proceedings. This exclusive view is taken by the Honourable Division Bench as well. Similarly, after going through the records, this Court is of the view that the final report certainly discloses the offences exclusively triable by the trial Court including Section 3(i)(ii) and 4 of TNPPDL Act.

4. Therefore, this Court is of the view that the learned Judicial Magistrate, Melur, is acting beyond his jurisdiction. Accordingly, the order under challenge is set aside and consequently, a direction is issued to the learned Judicial Magistrate, Melur, to take the final report on file and proceed with the same. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this

order.

5. At this juncture, the learned Public Prosecutor has brought to the knowledge of this Court, similar final reports are pending committal on the sole ground. Hence, the learned Judicial Magistrate, Melur, is directed to follow the order passed in these petitions and do the needful insofar as the other cases without fail.

6. With the above direction, these Criminal Original Petitions are allowed. To 1.The learned Judicial Magistrate, Melur, Madurai District. 2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com