

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL  
JUDGE & J.M.F.C., AT PUTTUR**

**: PRESENT :**

**Smt. Nirmala.K, B.A., M.L.,  
Additional Senior Civil Judge & JMFC.,  
Puttur, D.K.**

**DATED THIS THE 15<sup>th</sup> DAY OF JULY, 2021.**

**CRIMINAL CASE No.1237/2015**

**Complainant** : State by PI,  
Rural Police Station, Puttur  
By APP Puttur

V/S

**Accused:**

- 1) Abdul Kunhi N.S.,  
S/o. Mohammad Hazi,  
Aged about 50 years,  
R/at. Pundikai house,  
Iswaramangala post,  
Padavannur village,  
Puttur taluk, D.K.,
- 2) Bharath @ Bharathesh Rai,  
S/o. Anantha Rai,  
Aged about 32 years,  
R/at. Mudayuru house,  
Iswaramangala post,  
Padavannur village,  
Puttur taluk, D.K.,
- 3) Abbas K.M @ Ashraf,  
S/o. Moidukunhi A.K.,

Aged about 31 years,  
R/at. Kalethimaru house, Karnuru,  
Nettanige Mudnoor village,  
Puttur taluk, D.K.,

- 4) Abdul Rahiman @ Abdul Haris,  
S/o. Late. Abdul Khadar,  
Aged about 32 years,  
R/at. Nellithadka house, Karnuru,  
Nettanige Mudnoor village,  
Puttur taluk, D.K.,
- 5) E. H. Abdul Khadar,  
S/o. Late. Hasainar A.K.,  
Aged about 57 years,  
R/at. Farooq Manzil,  
Bellichadavu, Iswaramangala,  
Nettanige Mudnoor village,  
Puttur taluk, D.K.,
- 6) Ashraf M.A,  
S/o. Hasainar,  
Aged about 38 years,  
R/at. Thalebailu house,  
Iswaramangala,  
Nettanige Mudnoor village,  
Puttur taluk, D.K.,
- 7) M. Murali Mohan Shetty,  
S/o. A. Seetharama Shetty,  
Aged about 68 years,  
R/at. Ramasadana,  
Darbe Puttur Kasba village,  
Puttur taluk, D.K.,
- 8) A.K. Moidu Kunhi,  
S/o. Late. Abbas,  
Aged about 62 years,

R/at. Kalaithimaru house,  
Karnuru,  
Nettanige Mudnoor village,  
Puttur taluk, D.K.,

**(A1 to A8 Sri M.K., Advocate)**

**Orders on Application U/s 239 of Cr.P.C. filed by  
the accused persons.**

Accused submits that above case is filed for the offence punishable U/sec.4(1), 4(1A), 21(A) of mines and minerals development and regulations act and rules 3(1), 42, 43, 44 of Karnataka minor mineral concession rules and section 109, 379 r/w 34 of IPC. As against the registration of criminal case, the accused had preferred a criminal petition before the Hon'ble High court of Karnataka in Criminal petition No.10165/2017 and the Hon'ble High court was pleased to allow the petition in part and quashed the proceedings under MMRD act except section 109, 379 r/w 34 of IPC. Accused submit that there is no ingredients of Sec.379 of IPC present in the case so as to frame charges against the accused. As per complainant accused No.1 to 4 were removing laterite stone from the land belonging to accused No.5 to 8 from the private lands. Therefore if any offence U/sec.379 of IPC is committed, land owners are supposed to file complaint, but no such case is filed by land owners. Neither material object or subject matter of theft is seized from the custody of accused. Therefore accused submit that accused may be discharged for the offences leveled against them by allowing the said

application. Other side will not be prejudiced, if the accused not discharged they will put to great hardship and inconvenience. Hence the application.

2. On the other hand, the learned APP filed objection to the said application contending that on 9-10-2014 at 4.00 p.m., grama panchayath officer along with his men raided government land situated in Nettanige Mudnoor village quarry place where accused No.1 to 4 were carrying out illegal mining activities in violation of MMRD act and rules. Prima facie there are sufficient materials on record to show that accused are involved in the said offence. Since the court will have to frame charge on the basis of materials available on record furnished by investigating officer and not the documents and the witness statements of accused persons, at this stage it is not proper to entertain the said application filed by a accused persons. Investigating officer has collected sufficient documents, recorded the statement of important witnesses and after complete investigation he has found that accused persons were involved in the offence and therefore he filed charge sheet. When these materials are available it is not possible to discharge accused without going to trial, only to drag on the proceedings the said application is filed. This court has to looking to prima facie case to frame charges, but evidence required to convict the accused need not be present at this stage. On these grounds APP prays for rejection of the said application.

3. Heard both sides.

4. The only points that would arise for my considerations are:-

- 1] Whether accused has made out sufficient grounds to allow the application?**
- 2] What order?**

5. My findings on the above points are as under:-

**Point No. 1: Partly in the affirmative.**

**Point No. 2: As per final order for the following:**

### **REASONS**

**6. Point No. 1:** On perusal of records it is noticed that on 9-10-2014 Smt. Padmashree, geologist, mines and minerals department Mangalore, has received reliable information regarding accused indulging in illegal mining activity in Nettanige Mudnoor village and accordingly she collected men and raided the place, caught hold of accused persons and seized certain materials, came to the station and lodged complaint before jurisdictional police. Accordingly, FIR was registered in the Crime No.156/2014 for the offence punishable U/sec. U/sec.4(1), 4(1A), 21(A) of mines and minerals development and regulations act and rules 3(1), 42, 43, 44 of Karnataka minor mineral concession rules and section 109, 379 r/w 34 of IPC. After registration of the FIR investigating officer has conducted investigation and filed charge sheet against the accused No.1 to 8 for the offence punishable U/sec.U/sec.4(1), 4(1A), 21(A) of mines and minerals development and regulations act and rules 3(1), 42, 43, 44 of Karnataka minor mineral concession rules and section

109, 379 r/w 34 of IPC. This court (predecessor in officer) on 21-08-2015 has taken cognizance for the offence punishable U/sec.4(1), 4(1A), 21(A) of mines and minerals development and regulations act and rules 3(1), 42, 43, 44 of Karnataka minor mineral concession rules and section 109, 379 r/w 34 of IPC and summons came to be issued. Accordingly Accused No.1 to 8 appeared and obtained bail. Charges are not yet framed against the accused persons and at this stage the said application is filed.

7. Learned advocate for accused submit that, they had preferred criminal petition before the Hon'ble High court of Karnataka in Criminal petition No.10165/2017 and the Hon'ble High court was pleased to allow the petition in part and quashed the proceedings under MMRD act except section 109, 379 r/w 34 of IPC. While dealing with the present application it is only the prosecution papers that needs to be looked into. Those papers themselves shows that accused No.1 to 4 were carrying mining activity in the land belonging to accused No.5 to 8. So activity was carried on private land and not on government land. Such being the case private land owners have to file complaint, but not the state. On this technical ground accused has to be discharged. He submit that none of the ingredients of Sec. 379, 109 r/w 34 of IPC is complied. Even if it is stated for arguments sake that the sub soil mines and minerals found underneath earth is belonging to the state, but, he submit that even the sub soil of private lands belongs to private land owners (patta dars). Therefore, there are

no prima facie materials available on record so as to frame charge against accused. Hence, it is a fit case to discharge accused accordingly.

8. Per contra, learned APP submit that on the basis of materials collected by investigating officer this court has already taken cognizance of the above said offences. Therefore, prima facie materials are available against the accused. At this stage, it is not possible to hold that accused have not committed any offence and they deserves to be discharged. Further she submit that the sub soil mines and minerals underneath belongs to the government and theft of the same attracts section 379 of IPC, hence prays to reject the said application.

9. It is seen that accused persons had preferred Criminal petition No.10165/2017 on the file of Hon'ble High court of Karnataka to quash the entire proceedings. Hon'ble High court of Karnataka vide order dated 3-01-2019 has passed following order, wherein the relevant portion is extracted hereunder;

**5). "In the circumstances, following the said decision, proceedings in CC No.1237/2015 (FIR No.156/2014) pending on the file of Addl. Senior Civil Judge and ACJM, Puttur, D.K, Mangalore, are quashed in respect of offences punishable under Rules 3(1), 42, 43 and 44 of the Karnataka Minor Mineral concessions Rules, 1994 and Sections 4(1), 4(1A), 21(A) of the mines and Minerals (regulation of development)**

**Act, 1957, so far as petitioners are concerned. It is made clear that offences punishable Under Section 109 and 379 r/w 34 of IPC, are not quashed”.**

10. The above order clearly indicates that proceedings in CC No.1237/2015 are quashed in respect of offence punishable under Rules 3(1), 42, 43 and 44 of the Karnataka Minor Mineral concessions Rules, 1994 and Sections 4(1), 4(1A), 21(A) of the mines and Minerals (regulation of development) Act, 1957. Offences U/sec.109 and 379 r/w 34 of IPC is not quashed. Therefore this court proceeds against the accused for the offences U/Sec.109, 379 and r/w 34 of IPC.

11. On perusal of rival contention of both parties and on hearing their respective counsels, I am of the opinion that the material fact that arises for consideration is, whether the mining activity and theft is committed on the government land or on private property and the complaint filed by CW.1 is proper?

12. On careful perusal of complaint and FIR, nowhere it is stated about survey numbers and extent of Nettanige Mudnoor village, where alleged theft is committed. Similar is the case in the mahazar. **The documents submitted by the Smt. Padmashree, geologist on 9-10-2014** along with complaint discloses about Sy. No.348/3A, 1B, P3 which stands in the name of Abdul Khadar accused No.5, Sy.No.348/3A2 which stands in

the name of Shambu Sharma who is not shown as accused. Sy.No.304/1P1 and Sy.No.293/1P which is shown as government land, Sy.No.211/3 is standing in the name of Moidin Kunhi accused No.8. **The witness statement recorded by a investigating officer** shows that, in the land of accused No.5 to 8 and Ballu, accused No.1 to 4 were doing mining activity. **In mahazar dated 10-10-2014** accused were shown as carrying illegal mining activity in the land belonging to accused No.7, accused No.3 Ballu, Shambu Sharma and accused No.5.

13. On going through the above materials they do not tally in respect of survey numbers, its extent, the land owners and the accused persons doing mining activity. Inview of this, during the course of investigation IO has sought for clarification to tahsildhar Puttur taluk, to furnish details as to whether it is government lands or private lands. **Tahasildhar on 20-12-2014 has issued letter to PSI Rural police station** stating that, in the land belonging to Abdull Khadar in Sy. No.346/31A1BP3 and in the land of Shambu Sharma in Sy. No.348/3A2 accused No.1 is doing illegal mining activity, in the land of Murali Manohar Shetty in Sy. No.303/1P2 and Sy. No.303/2(P1) accused No.2 Bharath was doing illegal mining activity. Further in the lands of one Ballu in Sy.No.293/P2P4 accused No.4 and 5 are doing mining activity, Lastly, in Sy. No.210/3P2 belonging to accused No.8 accused No.3 is doing mining activity.

14. Lastly, **the final report of investigating officer as seen in column No.17** shows that accused No.1 to 4 are carrying illegal mining activity and committed theft of laterite in lands belonging to accused No.5 to 8.

15. The above charge sheet materials clearly discloses that IO is himself not sure as to whether lands are government lands or private lands. He has sought for clarification from concerned revenue officers and collected certain documents which discloses that the lands are belonging to private lands owners (patta dars). But **in report of tahsildhar dated 20-12-2014 and the list annexed to complaint by complainant dated 9-10-2014 shows that some lands are government land. The letter given by tahsildhar to PSI Puttur Rural station shows that Sy. No.303/1P2 out of 1.19 acres and Sy.No.303/2P1 out of 6.78 acres land of M. Murali Manohar Shetty, S/o. A. Girija Shetty an extent of 7.00 acres is the government land, wherein accused No.2 was carrying illegal mining activity. In the survey sketch furnished by the surveyor Sy.No.303/1P2 and 303/2P1 to the extent of 7.00 acres is the government land, wherein accused No.2 Bharath is indulged in illegal mining. In another letter given by a complainant/CW.1 to the police dated 6-02-2015 it is stated that Sy.No.303/1P2 and Sy.No.303/2P1, 7.00 acres are the government lands. Wherein accused No.2 Bharath is doing illegal mining work. The above documents are the only documents which shows that two**

survey numbers to the extent of 7 acres is the government land. All other lands belong to private patta dars.

16. Now, it is necessary to consider the ingredients of Sec.378 which reads as follows;

**“Theft:- Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.”**

17. As per the said provision, a person should take away a moveable property out of the possession of other person without his consent. In present case as per prosecution case, accused No.1 to 4 alleged to have dishonestly taken laterite stone from the land which is in the possession of accused No.5 to 8. If so, then the land owners accused No.5 to 8 ought to have filed the complaint. But this has not happened here. None of the private land owners have filed the complaint. It is the state who is the complainant. When the lands are not government lands, geologist/CW.1 has no locus standi to lodge the complaint against the accused persons.

18. Learned APP submit that, no doubt that lands belongs to private patta dars i.e., accused No.5 to 8, but laterite stone is found beneath earth and the sub soil underneath belongs to the government, but her submission is not supported by any authority or any materials.

19. But on the other hand advocate for accused relied upon decisions of **Hon'ble Supreme court of India in civil Appeal no.4549/2000 and Hon'ble High court of Karnataka in ILR 1993 KAR 2605**, which clearly shows that Hon'ble Supreme court and Hon'ble High Court of Karnataka clearly stated that, Patta dars are the full owners of sub soil minor mineral situated in the patta land. So state has no hold over the said minor minerals found beneath earth. Hence learned advocate for accused has clearly convinced the court that the laterite sub soil found underneath in the land belonging to Patta dars is the private property and does not belongs to the state. Therefore submission for learned advocate for accused is accepted by holding that lands in which the mining activity and theft is committed belongs to the Patta dars and not to the state. When such being the case, state cannot be the complainant. Infact if complaint is filed by private land owners i.e., accused No.5 to 8 the matter would have been different. Whereas in respect of government land to the extent of 7.00 acres each is concerned, the complaint filed by complainant/state is very well maintainable.

20. Incidentally it is relevant to note that, police have filed charge sheet against the accused persons in respect of offences punishable U/sec.109 of IPC. The allegations is that accused No.5 to 8 have abated and instigated accused No.1 to 4 to do illegal mining activity and commit theft of laterite. In other words, accused No.1 to 8 are acting hand-in-glove with each other, to

commit the offences. Interestingly, accused No.1 to 8 are also charge sheeted for the offence U/sec.379 of IPC. To attract the said provision, accused No.1 to 4 should have dishonestly taken away laterite from the land of accused No.5 to 8 without their consent. When accused No.5 to 8 are abating accused No.1 to 4 to commit the offence, how can they lift the laterite (commit theft) without consent of land owners i.e., accused No.5 to 8. This shows contradictory stand in the prosecution case itself. When accused No.5 to 8 instigated the other accused it cannot be said that accused No.1 to 4 have lifted laterite without consent of accused No.5 to 8. Therefore, the ingredients of both the sections are not complied in present case in respect of accused No.1, 3 to 8 as prosecution case itself shows contradictory versions. In respect of accused No.2 is concerned, there are sufficient materials to hold that he has committed theft in government land. So complaint filed by complainant/geologist is maintainable as against accused No.2. similarly accused No.2 has lifted laterite from government land, without obtaining license or permission. Hence, ingredients of provision of Sec.379 of IPC is well founded. But, no materials to say that, other accused have instigated accused No.2 to commit theft in government land. Therefore, Sec.109 of IPC is not attracted.

21. Admittedly defence/accused persons have not produced any documents with the present application. It is needless mention to here that, court has to consider only the charge sheet allegations and find out whether there are sufficient

material for framing charges or not. So the defence/documents of accused need not be considered. This aspect is made clear in the decision reported in **2005(crimes)(1)page1(SC), 2014(2) SCC page 709 and 1999 SCC (Cri) 373.**

22. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. It only means hearing the submissions of the accused on record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression hearing the submission of the accused can not mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submission of the accused has to be confined to the material produced by the police.

23. I have bestowed my consideration to the rival submissions of both the counsels on record. It is true that at the time of consideration of the applications for discharge, the court

cannot act as a mouthpiece of the prosecution or act as a post office and may shift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in **Shearaj Singh Ahlawat V.State of U.P. reported in (2012) 4 SCC (Cr1.) 21**, wherein it is stated that:

**“It is trite that at the stage of framing of charge the court is required to evaluate the material and document on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed, the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”**

24. Thus, from the above documents found in the charge sheet it is clear that, when accused No.1, 3 to 4, committed theft in the land of accused No.5 to 8, then the complaint ought to have been filed by complainant/ land owners, which is not the case here. So, complaint itself is not maintainable. Similarly, there is contradictory versions of prosecution in respect of Sec.379 and 109 of IPC is concerned in respect of the above accused. Hence, above accused are liable to be discharge of the above said offence. But, at the same time the charge sheet documents discloses that accused No.2 Bharath has committed

theft of laterite in the government land without any permission or license. Therefore, ingredients of Sec.379 of IPC is applicable only in respect of accused No.2 except Sec.109 of IPC. Accordingly, this point is answered **partly in the affirmative.**

25. **Point No.2:** In view of my above findings, I proceed to pass the following:

**ORDER**

Application filed by the accused persons U/sec.239 of Cr.P.C. is hereby partly allowed.

**Accused No.1, 3 to 8** are hereby discharged for the offences punishable U/sec.109 and 379 r/w 34 of IPC.

**Accused No.2 Bharath, S/o. Anantha Rai** is discharged for the offence punishable U/sec.109 r/w 34 of IPC.

**Accused No.2** shall face trial, only in respect of offence U/sec.379 of IPC.

(Dictated to the Stenographer, transcribed and typed by her, revised by me and then pronounced by me in the open Court on this the 15<sup>th</sup> day of July, 2021)

**(Smt.Nirmala.K)**  
**Addl.Senior Civil Judge & JMFC,**

**Puttur.**

**Order pronounced in the open court  
(Vide separate Order)**

**ORDER**

Application filed by the accused persons  
U/sec.239 of Cr.P.C. is hereby partly allowed.

**Accused No.1, 3 to 8** are hereby discharged for  
the offences punishable U/sec.109 and 379 r/w 34  
of IPC.

**Accused No.2 Bharath, S/o. Anantha Rai** is  
discharged for the offence punishable U/sec.109 r/w  
34 of IPC.

**Accused No.2** shall face trial, only in respect of  
offence U/sec.379 of IPC.

**(Smt.Nirmala.K)  
Addl.Senior Civil Judge & JMFC,  
Puttur.**