

**IN THE COURT OF III ADDL.JUNIOR CIVIL JUDGE - CUM- XIII ADDITIONAL
METROPOLITAN MAGISTRATE ANAKAPALLE :: VISAKHAPATNAM DISTRICT**

PRESENT: Smt P.Pradeepa
XIII ADDITIONAL METROPOLITAN MAGISTRATE,
ANAKAPALLE
Wednesday, this 01st day of March, 2023

C.C. No. 1686/2022

Between

State represented by Sub-Inspector of Police,
Anakapalli Rural Police Station.

....Complainant

And

Accused

Sirasapalli magaraju,
S/o. Venkata Rao, aged 30 years, Kapu by caste, Cultivation,
D. No. 1-44, Vooeru Vilalge, Anakapalle Madal,
Visakhapantam District, Cell No. 9704586928.

... Accused.

This case coming on 27.02.2023 before me for final hearing in the presence of learned A.P.P and Sri. S. Diwakar, Advocate, for the accused and having stood over till this day for consideration, this court made the following

JUDGMENT

1) The Sub Inspector of Police, Anakapalle Rural Police Station laid charge sheet against the accused in Cr.No. 232/2021 for the offence U/sec. 379 of IPC (MO Sand) & Sec. 21 (1) of MMDAR Act 1957.

2. The brief facts of the case of the prosecution were as follows:

a) On 04.11.2021 at about 09.30 hours, on receipt of credible information about illegal transportation of sand, LW2/Sobha Vallabaha Naidu along with LW1/M. Narayana Rao left police station and at about 10.00 hours when they reached at outskirts of Vuderu Village in the mean time they found bullock cart has coming from Vooderu village side and proceeding towards Anakapalle side and on seeing the police the bullock cart rider tried to escape from there, then LW2/Sobha Vallabaha Naidu along with LW1/M. Narayana Rao caught him and when LW2/Sobha Vallabaha Naidu questioned him then he started that his name and particulars and further he stated that he purchased the sand from unknown persons at Sarada river bed, Vooderu village and while to go to Anakapalle and surrounding or selling the sand on excess rate, in the mean time caught by the police. Then LW2/Sobha Vallabaha Naidu verified the bullock cart and found that ¼ unit of sand worth Rs. 1000/-. Later LW2/Sobha Vallabaha Naidu questioned him about the license for transportation of sand, on that he replied that he have no license or permission to transporting the sand. Then LW2/Sobha Vallabaha Naidu arrested him and seized the bullock cart with ¼ unit of sand worth Rs.1000/- under cover of an occurrence report as none were available to act as mediators.

b) Basing on the occurrence report LW4/Ch narasigna Rao was registered a case in Cr. No. 397/2021 for the offence U/sec. 379 of IPC and Sec. 21 (1) of MMDR Act of Anakapalle Rural Police Station on 17.11.2021 and investigated into.

c) During the course of investigation LW3/D. Eswarara Rao examined the LW1/M. Narayana Rao and LW2/Sobha Vallabaha Naidu, U/sec. 161 of Cr.P.C., and recorded his statement and then visited the scene of offence, examined the scene and prepared rough sketch and served notice to the accused U/sec. 41-A of Cr.P.C., and released him.

e) LW4/Ch narasigna Rao after completion of investigation filed charge sheet against the accused. Hence, the charge.

3. The cognizance was taken for the offence punishable U/secs. 379 of IPC and Sec. 21 (1) of MMDR Act, against accused on 13.10.2022 by this court and numbered as C.C. 1686/2022.

4. On appearance of the accused, copies of documents were furnished to the accused as contemplated U/s.207 of Cr.P.C by this court.

5. Later the accused was examined under Section 239 Cr.P.C., and the charge framed against him U/sec. 379 of IPC and Sec. 21 (1) of MMDR Act, was read over and explained to them in Telugu for which the accused denied the offence, pleaded not guilty and claimed trial.

6. During the course of trial prosecution had got examined P.Ws.1 to 3 and got marked Ex.P1 and P2 are marked marked on behalf of prosecution.

7. After closure of prosecution evidence, accused was examined under section 313 Cr.P.C, explaining incriminating circumstances appearing against him, he denied the same and reported no defence evidence. Hence the defence evidence is closed and no documents were marked.

Heard arguments for both sides.

8. Now the point for determination is:

Whether the prosecution was able to establish the guilt of the accused for the offence under Sec. 379 of IPC and Sec. 21 (1) of MMDR Act, beyond reasonable doubt ?

Point :-

9. It is the case of Prosecution that on 17.11.2021 at about 10.00 hours., at Vooderu village, Anakapalle Mandal, the accused transporting the sand on bullock cart, illegally without any license or permit by committing theft for their wrongful gain.

10. To prove its case, the prosecution examined P.W.1, deposed that on 17.11.2021 at about 10.00 hours himself and LW1/M. Narayana Rao and LW3/D. Eswarara Rao started at their police station to go to Vooderu for village visiting and when entered into Vooderu Village, they found the accused with bullock cart coming opposite to their direction with 1/4 unit of sand and the accused confessed that he purchased the sand from sarada river bed from some persons and transporting the same in the bullock cart sells the sand at various places without having any licence and permission. He sent LW3/D. Eswarara Rao, for securing the mediators from the surrounding area but in vain for that PW2 seized the bullock carts along with sand and prepared ExP1/occurrence report and after that PW2 along with accused and seized property came to their police station.

11. PW2 has corroborated the evidence of PW1 and further deposed that basing on ExP1/occurrence report he registered a case in ExP2 FIR in Cr. No. 397/2021 for the

offence punishable U/sec. 379 of IPC and Sec. 21 (1) of MMDR Act. Later he examined PW1 and recorded his statement and he also issued Sec. 41-A Cr.P.C., notice to the accused and released him. After completion of the investigation he filed charge sheet. The sand was auctioned through MRO by following due process of law and the bullock cart was returned to the owner of the property.

12. PW1 to PW3 were cross examined by the defence counsel. In cross examination PW1 admitted that they did not inform to the revenue officials about transportation of sand unauthorizedly as well as they did not ask them to act as mediators in this case. PW1 further admitted that they did not file any document to show with regard to disposal of sand. PW2 admitted that he did not file any photograph to show that they seized the sand from the possession of the accused.

13. The learned counsel for accused contended that the police never went to the scene of offence and never seized sand from the possession of accused and that the accused did not commit any offence and was falsely implicated in this case for statistics. The learned counsel further contended that the police failed to secure mediators as per procedure.

14. A Perusal of Ex.P.1 occurrence report shows that it is in the nature of confessional statement of accused. The confession of accused under Ex.P.1 cannot be based to uphold the prosecution case as it was recorded in the immediate presence of Police and thus such confession is hit U/Sec. 25 and 26 of Indian Evidence Act. Moreover bare confessional statement alone is not enough to inculcate the accused of the present offence. The prosecution has to establish the nexus between the accused and the sand seized from his possession beyond reasonable doubt.

15. Though P.W.1 and P.W.2 testified about detection of offence, seizure of sand along with bullock cart and arrest of accused but it is evident that there are many discrepancies in the investigation. The police did not follow the provision of Sec. 100 Cr.P.C which mandates that whenever any closed premises or residence of any person or any person is supposed to be searched then it must be done in the presence of at least one or more respectable inhabitants of that locality. At this point I would like to rely on the decision of Hon'ble High court of A.P. between **Botcha Raju Vs. State Rep. by the Inspector of Police, Vizianagaram Rural Circle**, reported in **1994 (2) A.L.T. (CrI.) P.69 (A.P.)**, the Hon'ble High Court held that *"the conviction cannot be given basing on the sole evidence of the police officers without corroboration by disinterested witnesses."* In the present case, the police have not collected mediators while seizing the bullock cart though the scene of offence occurred in busy locality, as pointed out by the counsel for the accused. The prosecution has not given sufficient explanation for not securing the mediators at the time of seizure. Non securing of mediators at the time of seizure creates serious doubt in the prosecution case about arrest of accused, seizure of sand from accused.

16. At this stage this court rely upon the decision of Hon'ble High Court between **Gujrala Ramesh Vs. State of A.P.**, reported in **2003 (2) ALD (CrI) 13**. Wherein it was held that *" practice of conducting investigation by the person who conducted raid and on whose complaint, First Information Report was lodged, shall not be resorted to do*

investigation, so that there may not be any occasion to suspect fair and impartial investigation." In this case, P.W.1 and 2 is the person who conducted raid and initiated criminal action, registered the case and investigated into the case. Thus, in the light of the above cited decision, this Court feels that it is highly unsafe to rely upon the testimony of P.W.1 and 2 to pose conviction against accused.

17. Therefore, in view of above observation, this Court finds no convincing and satisfactory evidence to hold that accused committed the offence. Further it is pertinent to note that P.W.1 though stated in his chief examination the sand was auctioned through MRO but no piece of documents are filed before this court. In other words, this Court is of the view that the prosecution failed to establish that all the accused committed the offence beyond all reasonable doubts. Accordingly, this point is answered in favour of accused.

18. In the result, accused is found not guilty for the offence u/s Sec.379 of IPC and Sec. 21 (1) of MMDR Act. He is acquitted U/s 248(1) CrPC. The bail bonds shall be cancelled after lapse of appeal time. Accused is directed to appear before the appellate authority if his presence is required before the appellate authority. Accused is further directed to execute a self bond for Rs.10,000/- (Rupees ten thousand only) U/sec.437 A Cr.P.C.

Typed to my dictation by the Stenographer, corrected and pronounced by me in open court this the 06th day of December, 2022.

*XIII Addl. Metropolitan Magistrate,
Anakapalle*

APPENDIX OF EVIDENCE:- **WITNESSES EXAMINED**

For Prosecution:-

P.W.1 : S. Vallabhanaidu
P.W.2 : D. Eswarara
P.W.3 : Ch Narasingarao

For Defence:-

-NIL-

EXHIBITS MARKED:-

For Prosecution:

Ex.P1 : Occurrence report by PW1
Ex.P2 : F.I.R in Cr. No. 397/2021 by PW2

For Defence :

M.Os Marked:-

For Prosecution:

-NIL-

For Defence :

-NIL-

XIII Addl. Metropolitan Magistrate,
Anakapalle.

**CALENDAR AND JUDGMENT
IN THE COURT OF THE XIII ADDL. METROPOLITAN MAGISTRATE
:: AT ANAKAPALLE.**

CALENDER CASE NO. 1686/2022

Date of offence	:	04.11.2021
Date of Occurrence	:	04.11.2021
Date of taken on file	:	13.10.2022
Date of apprehension of accused	:	SeC. 41- a CR.P.C.
Date of release on bail.		---
Date of commencement of trial	:	09.01.2023
Date of close of trial	:	27.02.2023
Date of sentence of order	:	01.03.2023
Complainant	:	State represented by Sub-Inspector of Police, Anakapalli Rural Police Station.

Particulars of the accused:

Accused Nambaru Ramunaidu,
S/o. Apparao, aged 26 years, Yadava by caste, Cultivation,
Narsapuram Village, Chodavaram mandal, Visakhapantam
District.

Nature of offence	<i>U/s. 379 of IPC and Sec. 21 (1) of MMDR Act,</i>
Finding of the court	Found not guilty

Sentence of Order :
In the result, accused is found not guilty for the offence *U/sec. 379 of IPC and Sec. 21 (1) of MMDR Act*, of IPC. He is acquitted U/s 248(1) CrPC. The bail bonds shall be cancelled after lapse of appeal time. Accused is directed to appear before the appellate authority if his presence is required before the appellate authority. Accused is further directed to execute a self bond for Rs.10,000/- (Rupees ten thousand only) U/sec.437 A Cr.P.C.

*XIII Addl. Metropolitan Magistrate,
Anakapalle.*