IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, DINDIGUL

Present: **THIRU. SWARNAM J RAJAGOPALAN,B.A.B.L.,(HONS.)**
Additional District and Sessions Judge, Dindigul.

Tuesday, the 17th day of March 2026

CRIMINAL APPEAL NO. 70/2024

(CNR.No.TNDG01-003564-2024)

1.	Trial Court	:	Judicial Magistrate Court, Nilakottai.
2.	Trial Court's Case No.	:	C.C. No.261/2016
3.	Appellant's Name	:	1. K.Murugan(age 45/2026) S/o.Karuppaiah, 1/33/1, West Street, Sithargalnatham, Nilakottai Taluk, Dindigul District-624219. 2. P.Muthu Pandi (age 39/2026) S/o.Pandi, Door No: 1/125, West street, Sithargalnatham, Nilakottai Taluk, Dindigul District-624219.
4.	Respondents' Name	:	State represented by The Inspector of Police, Nilakottai Police Station in Crime No.337/2016
5.	To what Offence the trial court passed the order and the sentence	:	U/S. 379 of IPC Accused is sentenced to Rigorous imprisonment for one year and also to pay a fine of Rs.5000/-(five thousand) each and in default of payment of fine for Simple Imprisonment for three

			months.
6.	Whether the order of the trial court is confirmed or modified	:	Set aside
7.	Taken on file by the Sessions Court	:	25.07.2024
8.	Date of arguments heard	:	05.03.2026
9.	Date of Order	:	17.03.2026

This Criminal Appeal came on 05.03.2026 for hearing before me in the presence of Thiru.T.Raja, and Thiru.K.Murugan Advocates for the Appellant and of Thiru.S.Soosai Robert, Additional Public Prosecutor for the Respondent, after having heard the arguments of both sides and on perusal of records and having stood over for consideration till this day, this Court delivers the following :

JUDGMENT

This Criminal Appeal has been preferred against the judgment of conviction and sentence passed by the learned Judicial Magistrate Court, Nilakottai in C.C.No.261/2016 dated 04.07.2024.

1) **The brief case of the prosecution is as follows:**

This appeal is directed against the judgment of conviction rendered in C.C. No.261/2016 by Judicial Magistrate Nilakkottai in Crime No. 337 of 2016. The appellants 1 and 2 were earlier booked by the prosecution for the offence of 379 IPC r/w Section 21 of Mines and Minerals Act for alleged transportation of prohibited mineral, namely one unit of river sand in his TN 57 AU 6736 tractor from Sithargalnatham Village Vaigai river bed. The

PW1 Balamurugan upon receiveing information about sand theft intercepts the accused persons on 25.10.2016 at around 6:30 AM, along with his Village Assistant Azhaguumalai while they were transporting one unit of river sand in their aforementioned tractor without any previous permission and the same was an punishable offence under Section 379 and under the Mines and Minerals Act accordingly the PW1 preferred a complaint with the jurisdictional police station, in exhibit P1 complaint on 25.10.2016. Thereafter the police on conclusion of investigation filed the final report under Section 379 and Section 21 of the Mines and Minerals Act against the accused persons 1 and 2 and thereafter the same was taken on file as C.C.No.261/2016 and copies were furnished to the accused persons 1 and 2 under Section 207 and when the accused persons were questioned about the charges for which they denied the same and claimed trial.

Accordingly, the prosecution examined PW1 to PW8 and exhibited exhibit P1 to P5 and one MO, namely the photograph of the tractor TN 57 AU 6736.

2) **The documents relied upon by the prosecution before the trial Court are as follows:**

Ex.P1 – Complaint

Ex.P2 – First Information Report

Ex.P3 – Observation Mahazar

Ex.P4 – Rough Sketch

Ex.P5 – Form 91

3) **Material object relied by the prosecution:**

Ex.MO1- TN 57 AU 6736 Tractor and unnumbered trailer with sand included photo (2 counts with CD)

No witnesses were examined nor any documents marked on the side of the defence.

4) **<u>Evidence of Witnesses:</u>**

I. According to the PW1 complainant Village Administrative Officer, he had deposed that upon receiving information from the local villagers, they had proceeded to the spot on 25.10.2016 at around 6:30 AM in the morning and intercepted the vehicle driven by the accused persons in TN 57 AU 6736 tractor in which the accused persons were carrying one unit of river sand, which is a prohibited mineral under the Tamil Nadu Mines and Minerals Act, from the Sithargalnatham village Vaigai river bed and accordingly informed the same to the Nilakottai police station and PW2 Azhagumalai is assistant was present along with him when the vehicle was intercepted. The PW1 had supported his complaint version and deposed in tune with his complaint and he was extensively cross examined on the aspects of the quantity of the river sand allegedly carried by the accused persons on the said day and also about the presence of independent witnesses in the scene of occurrence.

II. PW2 being the Village administrative officer’s assistant Azhagumalai supported the version of PW1 and deposed in tune with the complaint version, the PW3 being the Kannusamy, the villager had deposed, that he was not

aware of what was being carried, by the tractor and did not support the version of prosecution and was treated hostile and did not support the presence of the accused persons in the occurrence place.

III. PW4 being Palanisamy, Villager also did not support the prosecution’s case and remained hostile, did not confirm the presence of the accused persons in the scene of occurrence as claimed by the prosecution.

IV. PW5 Kannan, an observation Mahazar witness denied the prosecution version, remained hostile, did not support the prosecution version, denied having signed the observation Mahazar as claimed by the prosecution.

V. PW6 being Rajendran also remained hostile did not support the case of the prosecution and denied having signed along with Kannan in the Observation Mahazar as claimed by the prosecution.

VI. PW7 being the Anandhi and the Investigating Officer had deposed about the prosecution’s case and elaborated on the investigation conducted by her and the recoveries effected and about the filing of the final report.

VII. PW8 being the Karuppusamy retired Police who had registered the first information report on 31.10.2016 under Section 379 r/w. 21 (1) of MMDR Act and filed final report and deposed in tune with the prosecution's case.

5) Upon conclusion of the trial, the Learned Judicial Magistrate had held that the prosecution has proved the case of theft, convicted the accused person under Section 379 of the IPC for a period of one year and imposed a fine of Rs.5000/- failing which to undergo period of 3 months.

6) **Aggrieved by the decision of the trial judge, the appellant has preferred in the present appeal. The gist of the appeal memorandum is as follows:**

According to the appellant, the findings of the lower court is perverse as the conclusion of the trial court is only based on surmises and conjectures and the offence of 21(1) of Mines and Minerals Act is exclusively triable by Special Court for Mines and Minerals Act that is Honourable Sessions Court and therefore, the trial court ought not to have conducted this case and convicted the appellants and clubbed the offences of Section 379 and Section 21(1) of the Mines and Minerals Act together in one trial against the appellants.

7) The appellant also contended that the Learned Judge is failed to observe that PW1 who was the complainant, was only a hearsay witness, and another independent witnesses are examined by the prosecution and ignoring the settled principles of benefit of reasonable doubt, Learned Trail Judge had proceeded to give mechanical order of conviction and all the Pws 3, 4, 5 and 6 remained hostile, did not support the case of prosecution in spite of the same, the Learned Judge proceeded to convict the accused persons under section 379 IPC and imposed a sentence of one year and under fine of Rs.5000/- which is improper and resulted in miscarriage of justice.

8) Heard the Learned counsel appearing for the appellant, according to the Learned Counsel, the Learned Judge ought not to have clubbed the references of Section 379 and Section 21(1) of the MMDR Act and in the absence of any independent witnesses to support the prosecutions case, PW1 and PW 2 being the official witnesses and who is also admitted to be a only hearsay witnesses from the information given allegedly by the villagers ought not to have been placed much reliance by the Learned Trial Judge to convict the accused

person under Section 379, while the Learned Judge had not proceeded to deal with the accused persons for the offence of the MMDR Act.

9) According to the Learned counsel, such clubbing of offences is impermissible in law and should not have been done by the Learned trial Judge and has resulted in grave miscarriage of justice and according to him there are several decisions of the Honourable High Court deprecating the practice of clubbing of these such offenses in one single trial by the Learned Magistrate, and on these grounds, he prayed that the order of conviction passed by the Learned Judicial Magistrate in C.C.No. 261/2016 be set aside and the appellants be given the benefit of doubt as the prosecution has not established the offence of theft in the first place.

10) On the other hand, the Learned public prosecutor would submit that there is no procedural informity in the order passed by the learned Judicial Magistrate and the PW1 and PW2 being the official witnesses could not be attributed with any malafides for launching prosecution against the appellants/Accused persons and the accused persons were caught red handed while they were carrying the prohibited mineral under section 21(1) of the MMDR Act and accordingly the case was launched based on the complaint preferred by PW1 and thus the Learned Judge has rightly appreciated the materials on record and has rightly reached the conclusion of conviction and imposed a sentence of one year and also to pay a fine of Rs.5000/-(five thousand) each and in default of payment of fine for Simple Imprisonment for three months in the facts and circumstances in the case. Accordingly, the case does not require any interference.

11) Having heard the rival submissions, this court proceeds to first deal with the legality of clubbing of offences of section 379 IPC and Sec.21(1) of the MMDR Act as held by the *Hon'ble Madras High Court in the case of Selvaraj @ Veppadai Selvaraj vs.The Inspector of Police and others* where in it was held as follows:

> 6.In Re Sengol's case (supra), a Division Bench of this Court has settled the law, with regard to filing of final report in a case registered under two enactments, as under:-
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> "46. In view of the foregoing discussions, we answer the questions referred to us as follows:
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> > (i) Since, the offences under the Penal Code, 1860 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 Penal Code, 1860, shall not be liable to be quashed.
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> > (ii) If an act of the Accused constitutes offences under Penal Code, 1860 as well as the provisions of the Mines and Minerals (Development and Regulation) Act, the registration of a case both under the provisions of Penal Code, 1860 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 Penal Code, 1860 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.
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> > (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.
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> (v) In the State of Tamil Nadu, so long as the Notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.9.2006 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."

> 7.The Inspector of Police has been authorised by the Government of Tamil Nadu vide G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.9.2006, to file complaints under Section 22 of the Mines and Minerals Act. This position has been reiterated vide G.O.Ms.No.170, Industries (MMC.2) Department, dated 05.08.2020. Therefore, the first respondent Police ought to have filed the final report only in respect of the offence punishable u/s.379 IPC and in respect of the offence punishable u/s. 22(1) of the MMDR Act, he ought to have filed a separate complaint before the designated Court. On such complaint filed by the Inspector of Police, the designated Court ought to have taken cognizance in respect of the offence punishable u/s.22(1) of the MMDR Act".

12) The entire prosecution case, when scrutinised on the touchstone of settled principles as laid down by the Hon'ble High Court in the decision cited above as also in the light of the Hon'ble Full Bench in the case of S.Kumar vs. The District Collector and others, the prosecution ought to have filed final report in respect of offence punishable only under section 379 IPC and in respect of Section 22(1) of MMDR Act offence, a separate complaint ought to have been filed before the designated court. On such complaint, the designated court ought to have taken cognizance of the offence of MMDR Act. The non following of the procedure as held by the Hon'ble High Court is against the settled criminal jurisprudence, does

not inspire confidence to sustain the conviction recorded by the learned Magistrate. When the gravamen of the allegation is that the accused were found transporting one unit of sand in a tractor, allegedly removed from the Vaigai river bed, the prosecution has failed to establish the foundational facts necessary to constitute the offence of theft as to be elaborated in the following paragraphs.

13) Further, the manner in which the offences have been clubbed by the learned Magistrate discloses a patent illegality going to the root of jurisdiction. The allegation, as projected by the prosecution itself, pertains to illegal removal of sand from a river bed, which squarely falls within the domain of the Mines and Minerals (Development and Regulation) Act. The statutory scheme under the said enactment mandates that cognizance of offences can be taken only upon a complaint in writing by an authorised officer as observed by me supra in the light of decisions of Hon'ble High Court as extracted supra. In the present case, the prosecution has been initiated on the basis of a police report, and there is no material to show that the mandatory requirement of a complaint by a competent authority has been complied with. In such circumstances, the learned Magistrate could not have validly taken cognizance of the offence under the special enactment. By clubbing the said offence along with Section 379 IPC and proceeding to try the case as if both offences were triable in a common course, the trial court has effectively bypassed the statutory embargo, decision of full bench and assumed jurisdiction which is not vested in it. Such an approach cannot be countenanced in law.

14) It is also to be noted that the conviction under Section 379 IPC appears to have been recorded in substitution of, or as a corollary to, the alleged violation under the special enactment, without there being independent and legally admissible evidence to establish the ingredients of theft. When the substratum of the prosecution case itself is illegal mining, the failure to adhere to the mandatory procedure under the special law cannot be cured by resorting to a general penal provision, unless the ingredients of such offence are independently made out. There is no evidence, either oral or documentary, to identify the precise place from which the sand was allegedly quarried from the river bed. No witness has spoken to the actual act of extraction of sand from the river bed. The Village Administrative Officer and his assistant, who are the principal witnesses, have only deposed about interception of the vehicle while in transit, PW2 did not depose to have seen the PW1 intercepting the vehicle and PW1 also did not depose about the exact quantiy of the sand said to be carried by the accused person on the said day. Thus their evidence does not extend to proving the essential ingredient of theft. In the absence of proof of the source of the sand and the act of its removal, mere alleged possession or transportation cannot be elevated to an offence of theft. No independent alleged witnesses supported the case of prosecution and therefore the prosecution, has failed to establish the charge under Section 379 IPC beyond reasonable doubt, and the finding of the trial court in this regard is clearly unsustainable. In the present case, as discussed, there is a complete absence of evidence regarding the act of theft as observed supra. The conviction, therefore,

rests on conjectures and presumptions rather than proof as suspicion however strong cannot replace the actual proof.

15) The combined effect of these infirmities is that the trial suffers from both evidentiary insufficiency and jurisdictional defect. The failure to prove the essential ingredients of the offence, coupled with the improper assumption of jurisdiction by the Magistrate in respect of the offence under the special enactment, renders the conviction wholly unsustainable. These are not mere irregularities but go to the root of the matter, vitiating the entire trial. Accordingly, this Court is of the considered view that the judgment of conviction and sentence passed by the learned Magistrate cannot be sustained in law and is liable to be set aside. The accused are, therefore, entitled to be acquitted of the charges.

In the result, the Criminal Appeal 70/2024 is allowed. The conviction and sentence imposed on the appellants/Accused by the learned Judicial Magistrate Court, Nilakottai in C.C.No. 261/2016 dated 04.07.2024 is hereby set aside. The appellant is acquitted of the charges under Sections 379 IPC. The fine amount, if any paid by the appellant, shall be refunded to him forthwith. The bail bonds, if any executed by the appellant, shall stand cancelled.

Dictated to the stenographer, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 17th day of March, 2026.

Additional District & Sessions Judge,
Dindigul.