

In the court of the Judicial Magistrate No.II, Usilampatti.

Present : Thiru.G. Sathia Narayanan., B.A.,B.L.,

Judicial Magistrate No.II,

Usilampatti,

Wednesday 01st day of April' 2026

C.C.No.103/2026

1)Vanadevi

2) Malaichamy (**died**)

3) Veerathevan

4) Ponnuchamy

5) Arivazagan

.... Petitioners/accused

-Vs-

The state through Sub Inspector
of Police, Uthappanaickanur P.S.
in Crime.No.124/2023
Madurai District,
Tamilnadu.

..... Respondent

JUDGMENT

1. Introduction

The final report has been filed against the accused for the offence punishable under Section 379 of the IPC. alleging theft of sand. The case was taken on file as a Calendar Case. The accused filed a petition seeking discharge under Section 239 of the Cr.P.C.

2. Case of the defense :-

i) The allegation against the accused is that on 26/06/2023, at about 01:00 PM, the accused excavated the Sand by JCB bearing Regn. No.TN76

H 6885 at Patta land situated at Dhimmanatham Village, comprised in S. No. 28/5, 286, 28/7B.

ii) The Petitioner states that the above said land belongs to one Vanathevi, who is the Petitioner/A1 herein. The said petitioner has levelled the said lands, thereby making It suitable for cultivation. The alleged theft property (i.e) the sand was not recovered from the accused. The allegation in the complaint given by the V.A.O to the police is on presumption that, the accused alleged to have sold sands taken from the said property. And no sand was recovered. And the said vehicle was recovered on 02/08/2023, two months after the date of occurrence. Hence this inordinate delay to produce the vehicle as well as form 91 is also highly fatal to the prosecution and there is no explanation for the said delay.

iii) No value of the alleged theft property stated . No prima facie case madeout under section 379 of IPC.

iv) A false case without any materials against the accused is filed which is a clear abuse of process of law. Hence prayed to allow the petition.

3) The respondent/complainant has filed the counter and strongly objected that a mini trial cannot be conducted at this stage. Involvement of the accused and the vehicle can be decided at the time of trial.

4) Points for determination :-

Whether the materials placed along with the final report disclose sufficient grounds to proceed against the accused for the offence under section 379 IPC ?

5) Discussions :-

i) The allegation against the accused is that they have excavated sand using JCB from the patta land situated at Dhimmanatham Village. The specific case of the petitioners is that the land belongs to the first petitioner and the excavation was only for the purpose of levelling the land for agricultural use.

ii) On perusal of the records, It is seen that the prosecution has not produced any material to show that the accused had removed sand dishonestly with an intention to commit theft. The essential Ingredient of the offence under Section 379 IPC Is “dishonest Intention to take property out of possession of another”. In the present case, the land admittedly stands In the name of the first petitioner. Therefore, prima facie, the question of taking sand from the land of another does not arise.

iii) Further, it is pertinent to note that no sand alleged to have been stolen has been recovered from the accused. The prosecution has also not stated the quantity or value of the alleged stolen sand. The allegation that the accused sold the sand Is only based on presumption and no material has been placed to substantiate the same.

iv) Moreover, the vehicle alleged to have been used for excavation was recovered after a delay of about two months from the date of occurrence. The prosecution has not offered any satisfactory explanation for such inordinate delay, which creates serious doubt regarding the prosecution case at the threshold.

v) The Hon'ble High court of Madras in CrI.O.P. (MD) No.15672 of 2023, dated 04/09/2023 in a similar sand theft case has stated in Para 24, 25.

Para-24 :- “ On a plain reading of the FIR in Crime No.124 of 2023. even if the allegations are taken at their face value and accepted in entirety, this court is of the considered view that the ingredients of theft under section 379 of the IPC are not disclosed, since the FIR does not state the source of the Sand, the identity of the lawful possessor, or the act of dishonest removal from possession without consent”

Para-25 :- “ The FIR also does not mention the value of the alleged stolen property, despite value having statutory relevance in classification. The prosecution's attempt to fill the gaps by subsequent valuation assertions cannot cure the foundational infirmities at the stage of registration”

vi) The materials placed by the prosecution do not disclose the essential ingredients of the offence under Section 379 IPC. Even if the entire prosecution case is accepted as true, It would not constitute the offence of theft. At the most, It may give rise to proceedings under special enactments, if applicable, but not under Section 379 IPC.

vii) Section 379 IPC defines theft. The essential ingredients are: existence of movable property, dishonest intention, moving of such property without consent, and resulting wrongful gain or loss.

viii) In an offence of theft, proof of removal of identifiable movable property is foundational. In the absence of seizure, recovery,

quantification, or valuation, the essential ingredients of Section 379 IPC are not made out.

ix) Mere suspicion or presence of the vehicle near the alleged place, without seizure of sand or corroborative material, is insufficient to proceed to trial.

x) As held by the Hon'ble Apex Court, when the basic ingredients of the offense are not made out from the prosecution materials, the accused is entitled to be discharged. In view of the statutory bar and absence of prima facie materials, continuation of proceedings will amount to abuse of process of law.

xi) It is a settled position of law that if the accused is able to demonstrate that there is no ground to proceed with the trial or the charges leveled against the accused is baseless, then the accused can be discharged.

6) Hence, this court is of the considered view that no prima facie case is made out against all the petitioners/accused.

7) Hence, this court holds that the charge against all the petitioners / accused are baseless and so all the petitioners/accused are discharged from this case.

8. Findings :-

A) This Court finds that no prima facie case is made out under Section 379 of IPC. Continuation of proceedings would amount to misuse of the criminal process.

B) The discharge petition is allowed. The accused is discharged under Section 239 Cr.PC from the offence under Section 379 of IPC. Bail bond, if any, shall stand cancelled. ***The case property comprises in RPR No.477/23 is already handed over to the claimant in CrMP No.5019/2023, dated 06.11.2023 and he shall keep the same after the lapse of the appeal period.***

Pronounced in open Court on this 01th day of April' 2026.

Judicial Magistrate Court – II
Usilampatti