



**IN THE COURT OF PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.**

**PRESENT: THIRU.N.VENKATAVARADAN, B.L.,
Principal Sessions Judge,
Tirunelveli.**

Dated this, the 10th day of August 2026

Cr.M.P.No.360/2026 in Spl.S.C.No.157/2024

CNR.No.TNTL010007072026

Shanmugavel (Age 58/2024)
S/o.Chidambara Thevar,
Door No.52, South Street,
South Sanganthiradu,
Tirunelveli District.

...Petitioner / Accused.

Vs.

State represented by
The Inspector of Police,
Cheranmahadevi P.S.,
Cr.No.30/2023

...Respondent/Complainant.

Cr.M.P.No.361/2026 in Spl.S.C.No.158/2024

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The Inspector of Police,
Cheranmahadevi P.S.,

...Respondent/Complainant.



These petitions are coming before me for final hearing on 23.06.2026 in the presence of Thiru.U.Sivasubramanian, Learned counsel for Petitioner/accused and of Learned Public Prosecutor for Respondent/State and upon hearing the arguments of both side, perusal of all connected material records and having stood over for consideration till this date, this Court pass the following.....

COMMON ORDER

This petition in Cr.M.P.No.360/2026 is filed by the petitioner/accused to discharge him from the case in Spl.S.C.No.157/2024 in Cr.No.30 of 2023 on the file of Cheranmahadevi P.S.

2. This petition in Cr.M.P.No.361/2026 is filed by the petitioner/accused to discharge him from the case in Spl.S.C.No.158/2024 on the file of Learned Principal Sessions Judge, Tirunelveli.

3. Brief averments of both petition:-

The petitioner is implicated as accused in the Spl.SC.No.157/2024 for the offence under Section 379 of IPC and in the Spl.SC.No.158/2024 for the offence under Section 21(1), 21(4A), 22 MMDR Act through private complaint under section 200 Cr.P.C. The petitioner submits that it is the case of prosecution that the theft of sand without permit pass. On 12.02.2023 at about 17.30 hrs Special Sub Inspector of respondent police



along with Grade I Constable Thiru. Bala Manika Ramesh Kumar and Ram kumar were in patrol rounds relating to prevent sand theft near cheranmahadevi Thamirabarani River bed. The accused filling the river sand in two cement bags with a white basket near his vehicle TN 72 BJ 9658 TVS XL heavy duty while the police party enquired, the accused without the valid permit pass dishonestly theft Rs.500/- worth about river sand. The attachi was prepared in presence of police parties and the accused was arrested. The petitioner submits that at the outset the entire case of the prosecution in so far as implicating the present petitioner as accused is based on false and frivolous allegations. Even assuming but not admitting to the entire case of the prosecution to be true, still no offence of any nature is made out as against as the present petitioner. The petitioner submits that on perusal of the entire records including the FIR, Final report, 161 statements and other supportive documents, no criminality of any nature is made out as against the petitioner and there is no sufficient ground for this court to proceed against the petitioner while there is no criminality attributed towards him in the above said case. The petitioner submit that it is pertinent to mention here that at the time of preferring the complaint by the respondent the FIR was registered in Cr.No.30/2023 on the file of Cheranmahadevi police station, Tirunelveli dated 12.02.2023 for the



offence under section 379 of IPC against the petitioner accused, stating that the petitioner accused committed theft of river sand in two cement bags without government permit pass. The petitioner accused was not involved in the occurrence as per the version of the police. Other than police witnesses no private witnesses was examined in the above said case to criminate the petitioner accused. No rough sketch and mahazer was not prepared by investigation officer to show the scene occurrence. Simply stating the river bank of Thamirabarani, nearby Cheranmahadevi, itself makes doubt of prosecution case version. River bank of Thamirabarani nearby Cheranmahadevi was about 5 kms, no specific spot was shown in the prosecution case records. And further there were no records or documents to show that the theft property is river sand, no documents to certify by proper authority relating to river sand. The petitioner accused was arrested due to some enmity between the police. Subsequently the respondent police has prepared the records and case property in the respondent police station. In the absence of any specific material against the petitioner, no charge could be framed by this court as against the petitioner. The petitioner submits that the only material relied by the prosecution in so far as implicating the petitioner into the present case is the attachi prepared by the respondent police parties itself at the time of



their arrest. The said attachi given by the respondent police officials have no evidentiary value and based on which the petitioner cannot be prosecuted in the present case. The petitioner submits that further a private complaint was filed by the Mines authority for one and same occurrence under Mines and minerals (Development and regulation) Act 1957 in Spl.Sc.158/2024. It is violate to his fundamental right against the Indian constitution. The petitioner submits that in any case on perusal of the entire records there are no materials produced by the prosecution to substantiate the allegations made as against the petitioner. Without any iota of evidence any framing of charge or any proceeding of Trial as against the petitioner would cause unnecessary harassment and hardships to the petitioner. Further, submitted that other than attachi by the police there are no materials produced by the prosecution attributing criminality towards the petitioner. In such premise while the confession being an inadmissible piece of evidence, there are no sufficient ground for proceeding as against the petitioner and as such the present petition for discharge ought to be entertained by this court and as such the petitioner ought to be discharge from the present proceedings.



4. Brief averments of counter filed by respondent/state:-

This petition is not maintainable either in law or on facts. The averments in the discharge petition are false and incorrect. The respondent files all documentary proof against the petitioner. The respondent PS followed the procedures of MMDR Act. The petitioner stole the river sand in a plastic bag using two wheeler without any valid permit pass to sell the river sand and earn profit. The petitioner was arrested with the river sand along with vehicle that were seized with attachi in the presence of official witnesses. The averments in para 3 to 7 of discharge petition are incorrect and the petitioner is put to strict proof of the same. The respondent's investigation shows that the offence committed by the petitioner on the basis of collection of materials and the witnesses. The respondent police followed the all legal procedures and MMDR Rules, the collection of materials submitted by the respondent police shows that accusation against the petitioner. Only on conducting trial the prosecution case to be proved as against the petitioner on the evidence in the side of respondent police. The petitioner has not filed any document to disprove the allegation against the petitioner in final report. Hence, this petition is liable to be dismissed.

**5. Points for consideration:**

- 1) Whether the petitioner/accused has to be discharged from this case in Spl.S.C.No.157/2024?
- 2) Whether the petitioner/accused has to be discharged from this case in Spl.S.C.No.158/2024?

Points:-

6. This petitioner is the accused in the above case. He has been charged for the alleged possession of 2 bags of river sand on 12.02.2023. The respondent police originally registered a FIR in Cr.No.30/2023 for the alleged offence under section 379 IPC. Further, the charge sheet was also filed in this regard and the case was taken into file and thereafter as the allegations relate to the sand theft the learned Magistrate has committed the case and therefore the said case was taken into file by this court in Spl.S.C.No.157/2024 for the alleged offence of sand theft under section 379 IPC on the basis of allegations in the FIR in Cr.No.30/2023 on the file the Cheranmahadevi police station. In the same allegations a private complaint was also presented before the same Magistrate by making allegations with reference to the commission of the offence by the said person under section 21(1), 21(4A) and 22 of the MMDR Act through a private complaint under



section 200 Cr.P.C. The said complaint was also taken on file and was committed to this court as the offence is exclusively triable by this court which is designated as the special trial of offences under MMDR Act.

7. First of all, the petitioner have challenged the allegations levelled against him as insufficient with materials and there are no sufficient materials to prove the charges and claimed that he is innocent and therefore sought for discharge of the petitioner herein from the charges and to drop the above proceedings as there are no materials to proceed against the petitioner herein. As far as this contention is concerned the respondent vehemently opposes in both the petition that there are statement of witness who have deposed about the possession of this sand bags by the petitioner in the scene of occurrence. Further, there is also a seizure mahazer namely athatchi produced in this case and therefore, the respondent have got a good case to prove the charges as against the accused herein. Therefore, the court upon perusal of records finds that the police have relied upon charge sheet and the seizure mahazer and statement of witness in both the cases and therefore there is nothing to state that the case is bereft of evidence so that there could not no charge framed as against the petitioner herein. Further, as per the the well laid down legal principles if the court finds some materials even of some evidence incriminating accused in that case the



court could very well frame charges. Further, the evidentiary value of those materials can be considered only at the time of trial. Therefore, this contention of the petitioner that there is no material to frame charges as against the petitioner herein cannot be accepted. Further, the claim of falsity of the seizure mahazer namely athathci also cannot be accepted without permitting the evidences in this regard.

8. Further, one crucial question raised in both the petition is the maintainability of the private complaint as well as the charge sheet simultaneously, while it will be affecting the rights of the petitioner herein provided under constitution of India as fundamental rights. No doubt article 20(2) this protection of every citizen from punishment for single offence twice for the single act. Therefore, where the same comes into operation of this case need to be considered. In these circumstances, it is relevant to refer the judgment of the Honourable High Court of Madras in W.P. (MD).No.14341 of 2022 dated 13.06.2023 the full division bench, wherein legal principles have been evolved and summarised

“ In view of the foregoing discussions, we answer the questions referred to us, framed by the Division Bench, to give a quietus to the whole issue, as follows :-



(i) There is no embargo in bringing the police personnel within the ambit of “authorised officer empowered” u/s 21 (4), 22 and 23-A of the MMDR Act and the Government Orders in G.O. Ms. No.114, dated 18.9.2006 and G.O. Ms. No.12, dated 2.2.2009 are well within the powers and jurisdiction of the State Government.

(ii) In view of issue No.1 being held in the affirmative for bringing the police personnel within the ambit of “authorised officer empowered” u/s 21 (4), 22 and 23-A of the MMDR Act, the vehicles/materials, which have been seized by the police personnel on the basis of the authorisation granted by the Government under G.O. Ms. No.114, dated 18.9.2006 and G.O. Ms. No.12, dated 2.2.2009, which have been reiterated in G.O. Ms. No.170 dated 5.8.2020 does not suffer the vice of any illegality and, therefore, the seizure made as a consequence thereof, is wholly within the framework of Section 21 (4) of the MMDR Act.

(iii) The police personnel, who fall within the meaning of the “person authorised” under Section 23-A (1) and who happens to be the very same officer, who has registered the FIR, there would be no impediment for the said authority to compound the offence insofar as the offence under the MMDR Act and at the same time proceed with



the prosecution for the offence registered under the Indian Penal Code. in the interests of the environment as also the State, this Court suggests the Additional Chief Secretary to the Government, Natural Resources Department, in consultation with the Commissioner, Directorate of Geology and Mining to take necessary steps for making amendment to the Rules, 1959, more particularly, Rule 36-A, for obtaining expert opinion of the Director of Geology and Mines with regard to the mineral that is seized, prior to passing any orders compounding the offence u/s 23-A (1) by the person authorised u/s 22 of the MMDR Act.

(iv) The officer empowered under Section 21 (4), who seized the vehicle would be the best authority to file the private complaint u/s 22. However, if the authority who seized the vehicle is not empowered as the person authorised to file a private complaint u/s 22, then upon filing of report by the said authority, who seized the vehicle, the person authorised u/s 22 shall file the private complaint before the court of competent jurisdiction, within the time frame, which has been fixed in Muthu case. However, in the interest of justice and also in the interest of speedy trial, this Court suggests that the persons, who have been authorised u/s 21 (4) also be authorised u/s 22 as well so



that there is no delay in the initiation of prosecution and speedy trial. The Government Orders, to that extent, shall be issued with requisite modification.

(v) While the Special Court alone is entitled and empowered to try the offences under the MMDR Act, however, the power of the Special Court would be only in relation to confiscation and release of the vehicle, which has been seized and insofar as compounding of offence is concerned, it would be within the domain of the persons authorised u/s 22 of the MMDR Act, who would have authority and the Court has no role to play in the matter of compounding. Further, the Special Courts constituted under the MMDR Act shall jointly try the offences under the MMDR Act as well as the offence u/s 379 IPC so as to avoid any possible conflict in the decision.

(vi) In view of the aforesaid finding of this Court with regard to joint trial by the Special Court, this Court directs the police authorities, who have registered FIR for the offence u/s 379 IPC to file the final report and the person authorised u/s 21 (4), who has seized the vehicle to file, private complaint before the concerned Magistrate Court/Special Court and in case the police officer has seized the vehicle u/s 21 (4) of the MMDR Act and also lodged the FIR u/s 379



IPC, to file final report and private complaint before the concerned Magistrate Court/Special Court, within a period of three months from the date of this order. Upon filing of the final report by the police authorities, the concerned Magistrate is directed to commit the case forthwith to the Special Court having jurisdiction. The Special Courts, which have received the private complaints filed by the person authorised under the MMDR Act shall take up the case along with the case committed in respect of IPC offences, if any, relating to the same offender jointly and shall complete the trial as expeditiously as possible upon filing of private complaint/committal of the case”

Though in this case it is observed that for regular offence under section 379 IPC can be committed and for the offence under section 21(4) has to be taken on file by the Magistrate through a private complaint as required under section 22 of the MMDR Act which is also to be committed before the special court for trial of these two offences jointly. Further, as per this judgment when the offences are distinct as it has been specifically observed that the distinct offence can be tried jointly when committed in the series of the same transactions. Whereas in this case the allegations is only of sand theft, for which fact it is the possession of the sand taken from the river.



9. Further, the provisions of MMDR Act section 4(1A) provided punishment for possessing or storing or transporting any mineral otherwise than in accordance with law which is follows

“ No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.”

Further, the same becomes punishable under section 21(1)(4)(4A),

(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an



order of the court competent to take cognizance of the offence under sub-section(1) and shall be disposed of in accordance with the directions of such court.

Therefore, this Act provides punishment for storing, transporting of the river sand which is also a mineral.

10. Further, it also comes one restriction of taking cognizance of the offence without there being a complaint by complaint in writing by a person authorized in this behalf by the Central Government or the State Government. Whereas the full bench judgment of the Honourable High Court of Madras have discussed about all these aspects and enumerated the legal principles holding that the Inspector of police himself is the competent person to give a complaint and therefore on his complaint cognizance can be taken for the offence under section 4 and 21(1) of the MMDR Act. But at the same time if the court is taking cognizance under this provision simultaneously there cannot be any cognizance for the same act under section 379 IPC also. Further, only when the offence under section 379 IPC is the distinct offence of committing in theft relating to that sand theft, then cognizance can be separately taken and there can be a joint trial in those respects. Further, as per section 26 of General Clauses Act



there cannot be a punishment twice for the same offence, which is as follows

“ Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”

Therefore, when once this court had taken cognizance under section 379 IPC the same alone has to be proceeded in this case and there cannot be any second prosecution for the same Act by getting another private complaint which is committed in Spl.SC.No.158/2024. Therefore, this is clearly in violation of the well settled precedents and therefore this court holds that the charges in Spl.SC.No.158/2024 have to be dropped as this court is already taken cognizance for the sand theft under Spl.SC.No.157/2024, the said charge cannot be dropped as there are materials to proceed as against the petitioner herein.

Cr.M.P.No.360/2026

In the result, this petition is dismissed.

Cr.M.P.No.361/2026

In the result, this petition is allowed.



This order is dictated by me to my Steno-grapher, transcribed and typed by him in computer, corrected and pronounced by me in Open Court dated this the 10th day of August 2026.

**PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.**

Witnesses examined and documents marked on both sides :- NIL-

**PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.**



Principal District Court,
Tirunelveli.

COMMON ORDER

Cr.M.P.No.360/2026 in
Spl.S.C.No.157/2024

&

Cr.M.P.No.361/2026 in
Spl.S.C.No.158/2024

Dated :- 10.08.2026