

In the Court of the Principal Sessions Judge, Thoothukudi

Present : Tmt.R.Vasanthi, M.L.,
Principal Sessions Judge, Thoothukudi.

Monday, the 23rd day of March 2026

Spl. S.C NO.15/2022

[CNR No.TNTT01-006002-2022]

[P.R.C. No.51/2022 of Judicial Magistrate Court No.II, Srivaikundam]

[Alwarthirunagari Police Station, Crime No.144/2017]

Name of the Committing Court : Judicial Magistrate Court No.II,
Srivaikundam

Complainant & Crime No. : Inspector of Police,
Alwarthirunagari Police Station,
Crime No.144/2017.

Name of the accused : 1) Baskaran, Age 72/2026,
S/o.Mariyadumperumal,
2/32, Main Road,
Paulkulam,
Tiruchendur Taluk.
2) Chermamoorthy, Age 66/2026,
S/o.Thangaiya Nadar,
3/2/111, North Street,
Paulkulam.
3) Sudalaimani, Age 55/2026,
S/o.Sambasivam,

37, Kundu Street,
Alwarthirunagari.

- 4) Muthaiah, Age 68/2026,
S/o. Thiraviam,
25/5, Maravar Street,
Alwarthirunagari.

Charge framed against the accused :

Charge/Accused 1 to 4 : Without the permission of the Government, committed the theft of 2 units river sand in the tipper lorries bearing Regn. No.TN 69 AW 5253 and TN 69S 4356
Punishable u/s. 379 of IPC

Plea of the accused :

Charge/Accused 1 to 4 : Not guilty

Finding of the Judge:

Charge/Accused 1 to 4 : Not guilty

Judgment of this court

: In the result, the accused 1 to 4 are not found guilty u/s.379 of IPC., and the accused 1 to 4 are acquitted off from the above said charge u/s. 235(1) Cr.P.C. The bail bond executed by the accused 1 to 4 shall stand cancelled after the expiry of appeal time.

During the pendency of the case, the properties remanded in P.R.No.61/2025, namely, TN 69 AW 5253 was returned to the owner one

Thiru.Rajkumar, S/o. Baskaran as per the order of the learned Judicial Magistrate No.II, Srivaikundam in Cr.M.P. No.7708/2017 dated 06.09.2017, TN 69 S 4356 was returned to the owner one Tmt.P.Sujatha W/o. Baskaran as per the order of the learned Judicial Magistrate No.II, Srivaikundam in Cr.M.P. No.7709/2017 dated 06.09.2017 and Hitachi without registration was returned to the owner one Thiru.Baskaran, S/o. Mariyadum Perumal as per the order of the learned Judicial Magistrate No.II, Srivaikundam in Cr.M.P. No.7707/2017 dated 06.09.2017 on executing the bond and the above said persons are permitted to retain the possession of their respective vehicle and the bond executed by them shall stand cancelled automatically after the expiry of appeal time.

Counsel for the State

: Thiru.D.Mohandass Samuel, Public Prosecutor

Counsel for the accused

: Thiru.B.Perumal Prabhu

This case has come up before this Court for final hearing on 25.02.2026 in the presence of Thiru.D.Mohandass Samuel, Public Prosecutor for the State

and Thiru.B.Perumal Prabhu, Advocate for the accused and after hearing both sides argument, upon perusing oral and documentary evidences, after having stood over for consideration till this day, this Court delivers the following

JUDGMENT

On 05.08.2017, at about 12:30 hours, the accused in this case, namely Mani, Murugan, Asir Stephen, and Rajaselvam (Accused Nos. 2 to 5 in the charge sheet), illegally stolen river sand from Paulkulam Sakthi Chamber without any Government permission, with the help of the 1st accused, Baskaran, who is the owner of the said Sakthi Chamber, by using tipper lorries bearing Registration Nos.TN 69 AW 5253 and TN 69 S 4356 and a Hitachi vehicle without a registration number. Therefore, the Sub-inspector of Police, Srivaikundam Police Station filed a charge sheet stating that the act of the accused 1 to 4 and the accused 2 to 5 in the charge sheet, namely, Mani, Murugan, Asir Stephen, and Rajaselvam is punishable u/s.379 of IPC.

II. Initially, the learned Judicial Magistrate, Srivaikundam took the Charge Sheet on file as C.C. No.262/2017 and furnished the copies of all documents relied on by the prosecution to the accused as per Section 207 of Cr.P.C., and framed charges u/s.379 of IPC against eight accused and read over and explained to the accused and questioned the accused whether the accused plead guilty or not?. For which, the accused, Mani, Murugan, Asir Stephen and Raja Selvm (A2 to A5 in the charge sheet) admitted the charges. Hence, the

learned Judicial Magistrate, Srivaikundam passed judgment on 26.09.2017 and convicted and sentenced to pay a fine of Rs.3,000/- each, i/d. S.I. for two weeks for the offence u/s.379 of IPC. Further, the learned Judicial Magistrate, Srivaikundam has split up the case against the accused, namely, A1, A6 to A8 in the charge sheet (the present accused) as C.C. No.275/2017 from C.C. No.262/2017 and posted the case for trial.

III. Thereafter, on perusal of the case records, the learned Magistrate found that the offence is triable exclusively by the Hon'ble Special Court especially constituted to proceed the case which comes under Mines and Minerals Act and as per guidelines given by our Hon'ble High Court of Madras in Muthu vs. The District Collector, Puthukottai District and others dated 29.10.2018, 09.09.2019, 12.09.2019 and Sengol vs. State dated 05.01.2019 and the case is triable by the Court of Sessions and hence, the learned Magistrate converted the case in CC. No. 275/2017 as P.R.C. No.51/2022 and thereafter by invoking Section 209 of Cr.P.C., the learned Magistrate committed the case to this Court.

IV. After receipt of the records by this Court, this Court has taken the P.R.C case on file and assigned number in Spl. S.C.No.15/2022. Then, after hearing the arguments on both sides, and upon perusing the documents, as it was found that there is prima facie for having committed the offence, the charges were framed u/s.379 of IPC against the accused 1 to 4 and on questioning, the accused denied the charges and claimed to be tried. Therefore this Court

posted the case for trial to be commenced before this Court.

V. On the side of the prosecution, totally P.W.1 to P.W.3 are examined and marked Ex.P.1 to Ex.P4.

VI. The brief case of the prosecution on the basis of oral and documentary evidences as follows :

P.W.1 Thiru.Kasi was working at Alwarthirunagari Police Station from 2014 to 2017. P.W.2 Thiru.Petchi was working at Alwarthirunagari Police Station from 2016 to 2017. During that time, Thiru.Paul Isaac was working as Sub Inspector of Police at Alwarthirunagari Police Station. The investigation Officer Thiru.Paul Isac, Sub Inspector of Police died. Hence, P.W.3 Tmt.Amalorpavam, the present Sub Inspector of Police, Alwarthirunagari Police Station adduced evidence on behalf of the deceased Sub Inspector of Police Thiru.Paul Isac based on the records.

On 05.08.2017 at about 12.30 hours, P.W.1, P.W.2, Thiru.Paul Isac, Sub Inspector of Police and police parties were conducted raid and when they were proceeding towards Thirukulam, two lorries bearing Regn. No. TN 69A 5253 and TN 69S 4356 and a Hitachi without registration came out from Paulkulam Sakthi Chamber. On seeing the police party, persons in the lorries stopped the lorries and got down from the vehicle and ran away. However, the police party managed to apprehend five persons. On examination, the police party found that, the driver of the Hitachi was Asir Stephen, the driver of the tipper lorry

bearing Regn. No. TN 69A 5253 was Mani, Nanguneri and the driver of the tipper lorry bearing Regn. No. TN 69 S 4356 was Thirukalur Murugan. The accused Rajaselvam, Sudalaimani, Chermamoorthy and Muthiah helped to take sand. Thereafter, the police party seized the sand found in three vehicles under Ex.P1 / Atthachi. Since there is no independent witness, the police party signed in the Atthachi. Thereafter, at about 14.00 hours, the police party brought the five accused persons and the properties to the police station and registered FIR in Cr. No. 144/2017 u/s.379 of IPC / Ex.P3. The 7 photographs of the seized vehicles are Ex.P2 series. P.W.1 assisted the Sub Inspector of Police Thiru.Paul Isaac to register the case.

The Sub Inspector of Police Thiru.Paul Isaac remanded the accused to the Judicial custody and also sent the case properties to the Court and obtained P.R. No.61/2025. Thereafter, Thiru. Paul Isaac, Sub Inspector of Police took up the case for investigation and enquired the witnesses and recorded their statements. Further, Thiru. Paul Isaac, Sub Inspector of Police has sent letter to P.W.D., requesting the value of the sand. On 18.08.2017, Thiru. Paul Isaac, Sub Inspector of Police received report from P.W.D / Ex.P4 and enquired Thiru.Vinothkumar and recorded his statement. Other three accused, namely, Baskar, Mani and Murugesan got anticipatory bail from the Hon'ble Madurai Bench of Madras High Court. With this, Thiru. Paul Isaac, Sub Inspector of Police completed his investigation and filed charge sheet against the accused on

30.08.2017. With this, the prosecution evidence was closed.

VII. From the evidence let in by the prosecution witnesses, the incriminating evidence available against the accused were questioned u/s.313(1)(b) of Cr.P.C., by explaining the same to the accused and the accused denied those incriminating evidence as false and there is no evidence on the side of accused.

With this, the evidence of accused is closed.

VIII. Therefore the point for consideration in this case is :

Whether the prosecution has proved the charge u/s.379 of IPC., against the accused 1 to 4 beyond all reasonable doubts?

IX. On Point :

The learned Public Prosecutor would submit that, though P.W.1 to P.W.3 are police officials, their evidence are clear, cogent, credible, trustworthy evidence for proving the guilt of the accused and that the accused, namely, Mani, Murugan, Asir Stephen and Raja Selvam (A2 to A5 in the charge sheet) admitted the charges before the Judicial Magistrate Court, Srivaikundam, through which, the charge against the accused has been proved and hence, the accused must be dealt with in accordance with law.

2) Per contra, the learned defense counsel has contended that, P.W.1 to P.W.3 are police officials and their evidences was not corroborated by any

independent witness and that Thiru.Paul Isaac, the Sub Inspector of Police, who conducted investigation died and that P.W.3, who is the present Sub Inspector of Police, Alwarthirunagari deposed on behalf of the deceased Sub Inspector of Police and that lot of contradictions between the evidence of P.W.1 to P.W.3 and that in this case observation mahazar and rough sketch were not prepared, which is fatal to the prosecution and that Thiru.Paul Isaac, Sub Inspector of Police who is alleged to be present at the occurrence place registered the FIR as complainant and he examined the witnesses, conducted investigation and filed charge sheet which is not proper and hence, the prosecution has miserably failed to prove the charges leveled against the accused and therefore, all the accused must be acquitted from the charges framed.

3) The case of the prosecution is that, the accused herein and the accused, Mani, Murugan, Asir Stephen and Raja Selvam (A2 to A5 in the charge sheet) have illegally stolen two units of river sand in two lorries bearing Regn. No. TN 69 AW 5253, TN 69S 4356 and Hitachi vehicle without registration number. According to the prosecution, on 05.08.2017, at about 12.30 hours, P.W.1 Thiru.Kasi and P.W.2 Thiru.Petchi went along with Thiru.Paul Isaac, Sub Inspector of Police for raid. P.W.1 and P.W.2 in their evidences have deposed that, river sand were stolen through 2 lorries bearing Regn. No. TN 69 A 5253 and TN 69S 4356 and one Hitachi without registration and that the Sub Inspector of Police Thiru.Paul Isaac seized those vehicles under Atthachi /

Ex.P1. But on perusal of Ex.P1, it has been stated that, the tipper lorries bearing Regn. No.TN 69 AW 5253 and TN 69S 4356 and one Hitachi without registration used for the commission of offence. P.W.3 during cross examination has admitted as follows :

சாட்சிகள் விசாரணையில் வாகனத்தின் எண் TN 69 A 5253 என்று சொல்லியுள்ளார்கள் என்றாலும், அத்தாட்சியில் TN 69 AS 5253 கைப்பற்றப்பட்டதாக சொல்லப்பட்டுள்ளது என்றாலும் சரிதான்.

From the above, this Court is of the view that, the prosecution has not proved beyond reasonable doubt whether the vehicle bearing Regn. No. TN 69 A 5253 or the vehicle bearing Regn. No.TN 69 AW 5253 used for the commission of offence.

4) Further, during cross-examination P.W.1 has deposed as follows :

பிடித்து வைத்திருந்தவர்களை எந்த வாகனத்தில் காவல் நிலையம் கொண்டு சென்றோம் என்றால் எனக்கு தெரியாது. கைப்பற்றப்பட்ட வாகனங்களையும் சம்பவ இடத்திலிருந்து எவ்வாறு காவல் நிலையத்திற்கு கொண்டு சென்றோம் என்பதும் எனக்கு தெரியாது என்றால் சரிதான்.

And

ஆற்று மணல் எங்கிருந்து எடுக்கப்பட்டது என்ற விபரமும் எனக்கு தெரியாது என்றால் சரிதான்.

And

மணல் திருடுவது சம்பந்தமாக வருவாய் ஆய்வாளர் யாரேனும் காவல் நிலையத்தல் எழுத்துபூர்வமாக புகார் கொடுத்துள்ளார்கள் என்றால் எனக்கு தெரியாது.

And

இந்த வழக்கின் எதிரிகள் அனைவரும் வயதானவர்கள் என்றால் சரிதான்.

5) Likewise, P.W.2 in his cross examination has deposed as follows :

பிடித்து வைத்திருந்தவர்களை எந்த வாகனத்தில் காவல் நிலையம் கொண்டு சென்றோம் என்றால் எனக்கு தெரியாது. கைப்பற்றப்பட்ட வாகனங்களையும் சம்பவ இடத்திலிருந்து எவ்வாறு காவல் நிலையத்திற்கு கொண்டு சென்றோம் என்பதும் எனக்கு தெரியாது என்றால் சரிதான்.

And

ஆற்று மணல் எங்கிருந்து எடுக்கப்பட்டது என்ற விபரமும் எனக்கு தெரியாது என்றால் சரிதான்.

And

இந்த வழக்கின் எதிரிகள் அனைவரும் வயதானவர்கள் என்றால் சரிதான்.

If really P.W.1 and P.W.2 have gone on a raid along with Thiru.Paul Isaac, Sub Inspector of Police, definitely they would have knew the facts how the arrested accused and the seized vehicles were brought to the police station and where the stolen river sand was taken. But, P.W.1 and P.W.2 deposed that they did not

know how the arrested accused and the seized vehicles were brought to the police Station. Therefore, the above evidence of P.W.1 and P.W.2 creates a doubt whether P.W.1 and P.W.2 went on a raid on the date of occurrence along with the Sub Inspector of Police Thiru.Paul Isaac.

6) Further, P.W.1 during cross-examination has deposed that, Atthachi was prepared at the Police Station. But, contrary to that, P.W.2 in his cross-examination has deposed that, Atthachi was written by the Sub Inspector of Police in the place of occurrence. Further, in Ex.P1 / Atthachi, P.W.1, P.W.2 and the Head Constable Subanantham were signed. P.W.1 and P.W.2 in their chief-examination has deposed that, since there is no independent witnesses in the occurrence place, P.W.1, P.W.2 and the Head Constable Subanantham were signed. But, during cross examination, P.W.1 and P.W.2 have deposed that, the occurrence place is Tirunelveli – Tiruchendur National Highway and it is always a traffic-congested area. Therefore, the above evidence adduced by P.W.1 and P.W.2 during cross-examination falsifies the evidence adduced by P.W.1 and P.W.2 in their chief examination that since there is no independent witnesses in the occurrence place, P.W.1, P.W.2 and the Head Constable Subanantham were signed.

7) Likewise, during cross-examination P.W.1 has deposed that, P.W.1 and Subananthan / Head Constable went in P.W.1's vehicle and both Sub Inspector of Police went in their respective bikes. But, contrary to that, P.W.2 during

cross-examination has deposed that four of us went in a police jeep for raid. This raises a doubt as to whether, on the date of occurrence, P.W.1, P.W.2, Head Constable Subanathan, and Sub-Inspector of Police Thiru Paul Isaac went on the raid.

8) Further, during cross-examination P.W.1 has admitted that, the accused Baskar is the owner of Sakthi Chamber and he is doing brick trading with a Government license. But, PW.2 denied the same during cross-examination. The relevant portion of P.W.2's evidence is as follows :

எதிரி பாஸ்கர் சக்தி சேம்பரின் உரிமையாளர் மற்றும் அரசு உரிமம்
பெற்று செங்கல் வியாபாரம் செய்து வருகிறார் என்றால் தவறு.

The prosecution evidence is full of contradictions, omissions and discrepancies and especially evidence of P.W.1 is quite contradictory to the evidence of P.W.2.

9) Further, in this case, the investigation officer / Thiru.Paul Isaac, Sub Inspector of Police has not prepared observation mahazar and rough sketch. During cross-examination, P.W.3 has admitted that, in this case observation mahazar and rough sketch were not prepared. Therefore, non-preparation of observation mahazar and rough sketch is also fatal to the prosecution case.

10) Further, on perusal of Ex.P3 / FIR, it is evident that, Thiru.Paul Isaac, Sub Inspector of Police has been shown as complainant. Ex.P3 FIR was also registered by the said Sub Inspector of Police, Thiru.Paul Isac. Further,

Thiru.Paul Isac, Sub Inspector of Police also conducted investigation, recorded the statement of witnesses u/s.161(3) of Cr.P.C., and filed charge sheet. The Hon'ble Supreme Court in **Mohan Lal /vs./ The State of Punjab reported in AIR 2018 Supreme Court 3853** in paragraph 25 of the judgment held as follows :-

"25) It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof".

The aforesaid authority is squarely applicable to the case in hand. In this case also, Thiru.Paul Isaac, Sub Inspector of Police who headed the raiding party in the capacity of informant registered the FIR, continued the investigation, recorded the statement of witnesses and filed final report. Therefore, this Court is of the considered view that the registration of FIR, examination of witnesses and filing of charge sheet by a same person is an incurable infirmity and for that reason alone the accused are entitled for acquittal upon getting benefit of doubt

arising in this case and the point for consideration is answered accordingly.

Thus, the point is answered accordingly.

In the result, the accused 1 to 4 are not found guilty u/s.379 of IPC., and the accused 1 to 4 are acquitted off from the above said charge u/s. 235(1) Cr.P.C. The bail bond executed by the accused 1 to 4 shall stand cancelled after the expiry of appeal time.

During the pendency of the case, the properties remanded in P.R.No.61/2025, namely, TN 69 AW 5253 was returned to the owner one Thiru.Rajkumar, S/o. Baskaran as per the order of the learned Judicial Magistrate No.II, Srivaikundam in Cr.M.P. No.7708/2017 dated 06.09.2017, TN 69 S 4356 was returned to the owner one Tmt.P.Sujatha W/o. Baskaran as per the order of the learned Judicial Magistrate No.II, Srivaikundam in Cr.M.P. No.7709/2017 dated 06.09.2017 and Hitachi without registration was returned to the owner one Thiru.Baskaran, S/o. Mariyadum Perumal as per the order of the learned Judicial Magistrate No.II, Srivaikundam in Cr.M.P. No.7707/2017 dated 06.09.2017 on executing the bond and the above said persons are permitted to retain the possession of their respective vehicle and the bond executed by them shall stand cancelled automatically after the expiry of appeal time.

Dictated by me to the stenographer, transcribed and typed by her into

Material object:

Nil

Principal Sessions Judge,
Thoothukudi.**Case Summary**

i)	Name of the accused		Date of Arrest	Date of Release
1)	Baskaran	-	A1 released on anticipatory bail	
2)	Chermamoorthy	-	05.08.17	09.08.17
3)	Sudalaimani	-	05.08.17	09.08.17
4)	Muthaiah	-	05.08.17	09.08.17
ii)	The date of filing of Complaint/final report in the Court		--	Date of Atthachi 05.08.17
			--	Date of Final Report 14.09.17
iii)	The date of committal of the case to the Court of Sessions		--	21.07.22
iv)	The date of questioning of the accused under Sections 228, 240, 246 and 251 of the Code of Criminal Procedure, 1973, as the case may be ;		--	06.12.24
v)	Filing of all miscellaneous petitions and their results including the results on challenge before Superior Courts; except routine petitions like petitions under Section 317 of the Code;		--	--

vi)	<u>Date of examination in-chief and cross-examination of a witness;</u>			
			Chief-examination	Cross-examination
	P.W.1 and P.W.2	--	07.10.25	07.10.25
	P.W.3	--	09.02.26	09.02.26
vii)	Date of examination of the accused under Section 313 of the Code;	--	25.02.26	
viii)	Details of abscondance of an accused and his appearance/production, as the case may be; and	--	--	
ix)	Grant of stay by Superior Courts and the results thereof.	--	--	

Principal Sessions Judge,
Thoothukudi.