

IN THE COURT OF JUDICIAL MAGISTRATE NO.1, SRIVAIKUNTAM

Present : Thiru. B.Dharaneether. B. A., L L M.,
Judicial Magistrate No.1,
Srivaikuntam.

Dated : Tuesday, the 30th day of June 2026
C.C.No.109 of 2015

(CNR.No.TNNT09-000472-2015)

The State represented by

The Inspector of Police,

Murappanadu Police Station,

Thoothukudi District.

Crime No.31 of 2015.

... Complainant

/Vs/

Arumugam,

S/o. Ganapathi Thevar

... Accused

This case having come up for final hearing before this Court in the presence of Ms.M.Seyadali Fathima B.A.,B.L.,M.L., the learned Assistant Public Prosecutor Grade II appearing for the State and Tr.S.Ragunath B.A., B.L., the learned counsel appearing for the accused and upon perusing the records and connected materials and having stood over for consideration till date, this Court delivers the following:

JUDGMENT

This case pertains to the final report by the Inspector of Police, Murappanadu Police Station, and relates to the accused in a case regarding the offence of theft punishable under Section 379 IPC. The short case of the

prosecution is that, on 27.01.2015 at about 4.00 p.m., the Inspector of Police, Murappanadu Police Station and his Police Party were conducting a vehicle check at Kalangarai Vilakku on the Vallanadu – Kaliyavoor road, when the accused drove a tipper lorry, bearing Registration No. TN 72 AA 2013, and carrying about 2 units of river sand, without any permit or authorisation. The accused, upon seeing the Police Party, tried to escape from the vehicle. The Police Party apprehended him and the lorry along with the river sand was seized under a Mahazar. It is claimed that the accused, in the manner stated above, removed and transported river sand, in a clandestine manner, and thus has committed the offence under Section 379 IPC.

2. On appearance before the Court, the accused was provided with copies of the materials appended with the prosecution. After hearing both sides, and in light of the available materials on record, charges were framed against the accused under section 379 IPC. The charge was read and explained to the accused in Tamil. The accused denied the charges and claimed to be tried.

3. In order to prove the charge, the prosecution examined PW1 to PW3 and marked Ex.P1 to Ex.P5. No material object was produced before this Court. On completion of prosecution evidence, the incriminating circumstances appearing against the accused were put to him under Section 313(1)(b) Cr.P.C. The accused denied the same as false. No oral or documentary evidence was adduced on the side of the accused.

4. The point that arises for consideration is:

Whether the prosecution has proved beyond reasonable doubt that on 27.01.2015 at about 4.00 p.m., near Kalangarai Vilakku on Vallanadu – Kaliyavoor road, the accused was found transporting river sand in tipper lorry bearing Registration No.TN 72 AA 2013 without any permit or lawful authority and thereby committed theft of river sand punishable under Section 379 IPC?

5. PW1 Ponram has deposed that on 27.01.2015 at about 4.00 p.m., when he was working as First Grade Constable at Murappanadu Police Station, he, along with Youth Brigade Constable Muthuraja and Inspector of Police Bernard Xavier, was engaged in vehicle check at Kalangarai Vilakku. At that time, a tipper lorry bearing Registration No.TN 72 AA 2013 came with about 2 units of river sand. When the vehicle was stopped and questioned, the driver got down and ran away. PW1 has further stated that the police party chased and secured him within about 100 metres and, on enquiry, it came to light that he was Arumugam, son of Ganapathi Thevar. PW1 has also stated that the sand was transported without permit and the Inspector seized the lorry and sand under seizure mahazar. PW1 has identified his signature in the seizure mahazar, which was marked as Ex.P1.

6. PW2 Muthuraja has also spoken in the same line. He has stated that on 27.01.2015 at about 4.00 p.m., he was along with Inspector Bernard Xavier and PW1 Ponram during vehicle check near Kalangarai Vilakku. At that time, the tipper lorry bearing Registration No.TN 72 AA 2013 came from the village side

and, when the vehicle neared the police party, the driver stopped the vehicle and ran away. PW2 has stated that the accused was chased and secured and, on enquiry, he disclosed his name as Arumugam, son of Ganapathi Thevar of Kaliyavoor. PW2 has also stated that the accused had no receipt or permit for transporting sand and that he signed as witness in the seizure mahazar.

7. PW3 Bernard Xavier, the then Inspector of Police, has deposed that on 27.01.2015 at about 4.00 p.m., he was conducting vehicle check along with PW1 and PW2 at Kalangarai Vilakku on Vallanadu – Kaliyavoor road. He has stated that the accused came in tipper lorry bearing Registration No.TN 72 AA 2013 carrying about 2 units of river sand without Government permission. He seized the lorry and the sand under seizure mahazar. Since independent witnesses were not available in that locality, he obtained the signatures of PW1 and PW2 in the seizure mahazar. The seizure mahazar has been marked as Ex.P3. PW3 has further stated that he came to the police station with the accused and seized properties, registered FIR in Crime No.31 of 2015, sent the accused to Court, sent the seized lorry and sand to Court under Form 91 and, after investigation, filed final report. FIR was marked as Ex.P4 and Form 91 was marked as Ex.P5.

8. The learned Assistant Public Prosecutor submitted that the evidence of PW1 to PW3 is cogent, natural and consistent. It was further submitted that the accused was found in possession and control of the tipper lorry carrying river sand and no permit or lawful authority was produced by him. Therefore, the ingredients of Section 379 IPC are proved.

9. Per contra, the learned counsel for the accused submitted that no independent witness was examined, that no complaint was given by Revenue or Mines Department, that the complainant and Investigating Officer are one and the same, that no patrol register was produced, that the source of the sand was not specifically proved, and that the accused has been falsely implicated.

10. This Court carefully considered the rival submissions and perused the entire evidence on record.

11. The evidence of PW1, PW2 and PW3 clearly establishes that on the date and time of occurrence, the police party was conducting vehicle check near Kalangarai Vilakku and that the accused came in tipper lorry bearing Registration No.TN 72 AA 2013 carrying river sand. PW1 and PW2 were present at the time of occurrence and they have clearly spoken about the accused stopping the vehicle, running away from the vehicle, being chased and secured by the police party. PW3, being the officer who conducted the vehicle check, seized the lorry and sand, registered the FIR and filed the final report, has also given clear evidence regarding the occurrence.

12. The evidence of PW1 to PW3 is mutually corroborative on material particulars, namely, the date and time of occurrence, place of vehicle check, registration number of the tipper lorry, presence of river sand in the vehicle, absence of permit or receipt, attempt of the accused to run away, securing of the accused, seizure of lorry and sand, and registration of the case. The defence was

not able to elicit any material contradiction affecting the core of the prosecution case.

13. The main contention of the defence is that no independent witness was examined. It is settled that the evidence of official witnesses cannot be rejected merely on the ground that they belong to police department. What is required is careful scrutiny. In the present case, PW1 and PW2 are occurrence witnesses and PW3 is the detecting officer. Their evidence is natural and consistent. No motive has been suggested as to why PW1 to PW3 should falsely implicate the accused in a case of this nature. Therefore, the non-examination of independent witnesses is not fatal to the prosecution.

14. The next contention is that no complaint was given by Revenue or Mines Department. So far as the offence under Section 379 IPC is concerned, such a complaint is not a condition precedent. Section 379 IPC is a cognizable offence. When the police themselves detect the commission of a cognizable offence during vehicle check, they are competent to register the case and investigate the matter. Therefore, the fact that no Revenue or Mines official lodged a separate complaint does not affect the prosecution case under Section 379 IPC.

15. The learned counsel for the accused further contended that the prosecution has not proved the exact river or river-bed from which the sand was allegedly taken and therefore the charge under Section 379 IPC is not established. This Court is unable to accept the said contention. In the present

case, PW1, PW2 and PW3 have consistently spoken that the accused was found transporting river sand in the tipper lorry bearing Registration No.TN 72 AA 2013 and that no permit, receipt or lawful authority was produced at the time of interception. The prosecution is not required to prove the exact spot of quarrying or the precise river-bed with mathematical certainty when the accused was caught in actual possession and transport of river sand without lawful authority. Once the prosecution proves the foundational facts that the accused was found in possession and control of the vehicle carrying river sand and that he failed to produce any permit or transport slip at the time of interception, the fact whether such sand was lawfully quarried, purchased or transported under any valid permit is a fact especially within the knowledge of the accused. Therefore, by virtue of Section 106 of the Indian Evidence Act, the burden lies upon the accused to offer a probable explanation or produce the permit, receipt or transport slip, if any. In the present case, the accused has not produced any such document and has not offered any probable explanation. Hence, the defence contention regarding non-proof of the exact source of river sand does not create any reasonable doubt in the prosecution case. On the contrary, the absence of lawful explanation strengthens the inference that the accused had dishonestly removed and transported the river sand without authority.

16. The further contention is that the complainant and Investigating Officer are one and the same. This circumstance by itself is not sufficient to discard the prosecution case. In a case of detection during vehicle check, the

detecting officer may register the FIR and proceed with the investigation. Unless prejudice, bias or false implication is shown from the evidence, the prosecution case cannot be thrown out solely on that ground. In the present case, no such material has been elicited in cross-examination.

17. The defence has also pointed out that the prosecution has not produced patrol records and that the FIR does not contain the vehicle number in the relevant column. These are only minor infirmities. The vehicle number TN 72 AA 2013 has been consistently spoken to by PW1, PW2 and PW3. The seizure mahazar and Form 91 also support the seizure of the vehicle and sand. The omission to mention the vehicle number in one column of the FIR does not create any reasonable doubt when the oral and documentary evidence otherwise clearly proves the identity of the vehicle and the seizure.

18. The prosecution has proved that the accused was found transporting river sand in the said tipper lorry. The accused did not produce any permit, receipt, transport slip or lawful authority either at the time of interception or before this Court. Once the prosecution has proved the foundational facts that the accused was found in possession and control of the lorry carrying river sand and that no permit was produced, the existence of any lawful authority or permit for such transportation is a fact especially within the knowledge of the accused. The accused has not offered any probable explanation and has not produced any document to show lawful possession or transport of the sand. Hence, an adverse inference can be drawn against the accused.

19. River sand is movable property. The prosecution has proved through PW1 to PW3 that the accused was found transporting river sand in the said tipper lorry without producing any permit or lawful authority. The attempt of the accused to run away from the vehicle on seeing the police party is also a relevant circumstance. Though the defence has contended that the exact source of the river sand has not been proved, the accused, who was found in possession of the sand, has not produced any lawful document to show that the sand was legally obtained or transported. Therefore, the absence of permit, possession and transport of river sand, attempt to flee from the spot, and failure to offer any lawful explanation cumulatively prove the dishonest intention of the accused. Accordingly, the ingredients of Section 379 IPC stand proved beyond reasonable doubt.

20. Therefore, this Court holds that the prosecution has proved beyond reasonable doubt that the accused dishonestly removed and transported river sand without lawful authority and thereby committed theft punishable under Section 379 IPC.

21. In the result, the accused is found guilty for the offence punishable under Section 379 IPC and is convicted thereunder under Section 248(2) Cr.P.C.

22. Accused questioned on quantum of sentence and he pleaded for leniency.

23. This Court has carefully considered the submissions on sentence. The offence proved against the accused is not an ordinary theft of private property. It

relates to theft and unlawful transportation of river sand, which is a natural resource and public property. Such offences cause loss to the State and also affect river ecology and environment. Therefore, the offence of sand theft has to be viewed seriously. At the same time, considering the facts and circumstances of the case and the nature of evidence available on record, this Court is of the view that imposition of substantive sentence with fine would meet the ends of justice.

Accordingly, the accused is sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for one month, for the offence under Section 379 IPC.

Typed by me, corrected and pronounced by me in open Court on this the 30th day of June 2026.

**Judicial Magistrate No.I,
Srivaikuntam**

Witnesses examined on the side of prosecution

P.W.	Name	Details
PW1	Ponram	Seizure mahazar witness
PW2	Muthuraja	Seizure mahazar witness
PW3	Bernard Xavier	Investigating Officer

Documents marked on the side of prosecution

Exhibit	Description
Ex.P1	Signature of PW1 in seizure mahazar
Ex.P2	Signature of PW2 in seizure mahazar
Ex.P3	Seizure mahazar
Ex.P4	First Information Report
Ex.P5	Form 91

List of Material Objects

Nil

List of Defence Witnesses

Nil.

List of Defence Exhibits

Nil.

**Judicial Magistrate No.I,
Srivaikundam.**

Note:

1. Accused convicted
2. Result of case informed to concerned police
3. No witnesses were retained for more than three hearings
4. Date of judgment 29.06.2026
5. Date of uploading 29.06.2026

Copy submitted to

The Hon'ble Chief Judicial Magistrate, Thoothukudi