

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No.10465 of 2025

Between:

1.P RASHIDULLA, S/O. P MABUSAB, AGED ABOUT 44 YEARS, R/O. H.NO. 5-1365/7, LAKSHMIPETA, YEMMIGANURTOWN AND MANDAL, KURNOOL DISTRICT.

...PETITIONER/ACCUSED

AND

1.THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, AMARAVATHI. THROUGH S.H.O, C. BELAGAL P.S, KURNOOL DISTRICT

2.M THIMMA REDDY, SUB INSPECTOR OF POLICE, C BELAGAL P.S., KURNOOL

...RESPONDENT/COMPLAINANT(S):

DATE OF JUDGMENT PRONOUNCED: **05.12.2025.**

SUBMITTED FOR APPROVAL:

THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No

3. Whether Her Lordship wish to
see the fair copy of the Judgment? Yes/No

DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA

* THE HON'BLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA

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...RESPONDENT/COMPLAINANT(S):

! Counsel for Petitioner : Sri Posani Venkateswarlu, learned Senior Counsel assisted by Sri K.V.Raghuvir.

^ Counsel for Respondents : Ms.K.Priyanka Lakshmi, Assistant Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

This Court made the following:

APHC010537532025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

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...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused:

1.K V RAGHU VEER

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA**CRIMINAL PETITION NO: 10465/2025****ORDER:**

The instant criminal petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C')/under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') has been filed by the petitioner/Accused No.3, seeking quash of the proceedings pending against him in C.C.No.720 of 2025 on the file of the learned Judicial Magistrate of First Class-cum-Special Mobile Court, Kurnool, for the offences punishable under Sections 303(2) of BNS and Section 21(1) of MMDR Act (Sand Theft).

2. Heard Sri Posani Venkateswarlu, learned Senior Counsel assisted by Sri K.V.Raghuveer, learned counsel for the petitioner and Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor on behalf of the State.

3. Learned Senior Counsel for the petitioner would submit that the Court has taken cognizance in this matter for the offence punishable under Sections 303(2) of BNS and Section 21(1) of MMDR Act (Sand Theft). Learned Senior Counsel would further submit that as per the said provisions, if the worth of the property is above Rs.5,000/-, it is a cognizable offence and non-bailable. But when the property's worth is below Rs.5,000/-, it is a non-cognizable offence and bailable offence. In the present case, the authorities found the sand in one Trailer attached to the Tractor and another Tractor is empty. The worth of the property is not mentioned either in the complaint or the charge

sheet. Learned Senior Counsel would further submit that when the case is not cognizable, the police have nothing to do to register the case and file a report. Learned Senior Counsel would further submit that this case has been lodged against the petitioner/Accused No.3, basing on the confession of the co-accused, which is corroborative piece of evidence but not substantive piece of evidence to maintain the case. Learned Senior Counsel would further submit that the Accused No.3, who is the petitioner herein, is not the owner of the Tractor. It is also argued that the informant and the investigating officer are one and the same in this case. The offence under Section 22 of MMDR Act would show that the authorized Officer from the Mining Department only can file a private complaint. The police cannot register a case and file a report before the Court. Learned Senior Counsel brought to the notice of this Court that though the report is filed for the offence under Sections 303(2) of BNS and Section 21(1) of MMDR Act (Sand Theft). The Court has taken cognizance for the offence under Section 303(2) of BNS.

4. Learned Assistant Public Prosecutor would submit that the worth of the sand as per the report of the Tahsildar is Rs.1,500/-. She would further submit that the police have not obtained any permission of the Court to conduct investigation in non-cognizable offence.

5. At this juncture, it is apposite to refer Section 303 of Bharatiya Nyaya Sanhitha, 2023 which defines the offence of “Theft” as follows:

303. *Theft* :- (1) *Whoever, intending to take dishonestly any movable property out of the possession of any person without that*

person's consent, moves that property in order to such taking, is said to commit theft.

(2) Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:

Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.

6. The Section 303 of BNS corresponding with Section 378 of Indian Penal Code, which also defines the offence of Theft. The offence under Section 378 IPC, punishable under Section 379 IPC is an entirely cognizable offence. However, the offence under Section 303 of BNS is punishable based on the severity of the offence. Under Section 303(2) of BNS, when the value of stolen property does not exceed Rs.5,000/- and where such property is restored or returned, and if it is the first conviction, the punishment prescribed is only community service, which is a lesser punishment. There is no doubt that the offence under Section 303(2) BNS is a non-cognizable offence. In such circumstances, the police shall follow procedure laid down under Section 174 of Bharatiya Nyaya Suraksha Sanhitha, which mandates the police to obtain appropriate direction from the concerned Magistrate, to proceed with investigation. Coming to the offence under Section 21(1) of MMDR Act, the Trial Court is barred under Section 22 of the MMDR Act, from taking

cognizance of the offences under the MMDR Act, except on written complaint by the authority notified by the government.

7. Coming to the present case, as rightly conceded by the learned Assistant Public Prosecutor that the value of stolen sand is Rs.1,500/- and it is a non-cognizable offence. The police mechanically registered the FIR against the petitioner without obtaining appropriate direction from the concerned Magistrate and proceeded with investigation and filed chargesheet, which is a clear abuse of process of law and the present Criminal Petition is liable to be allowed.

8. In the result, this Criminal Petition is allowed. The case against the petitioner/accused No.3 in C.C.No.720 of 2025 on the file of the learned Judicial Magistrate of First Class-cum-Special Mobile Court, Kurnool, for the offences punishable under Sections 303(2) of BNS and Section 21(1) of MMDR Act (Sand Theft), is hereby quashed. However, it does not preclude the competent authority under the MMDR Act to take further course of action according to law, if so advised.

As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

Dr. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date: 05.12.2025.

Note: LR copy to be marked.

B/o.

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HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 10465/2025

Dated.05.12.2025

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