

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.4.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl.R.C.No.100 of 2015

S.Murugesan

...Petitioner/Accused

Versus

State represented by
Inspector of Police,
Dharapuram Police Station
Dharapuram
Tiruppur District

...Respondent/Complainant

PRAYER:

Criminal Revision Petition filed under Section 397 r/w 401 of the Criminal Procedure Code against the order dated 09.01.2015 passed by the Learned Chief Sub-Judge Dharapuram, Thiruppur District in C.M.P.No.129 of 2014 in S.C.No.41 of 2014.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.R.Prathap Kumar
Govt. Advocate (Crl. Side)

ORDER

This revision petition has been filed challenging the dismissal of the discharge petition filed by the petitioner under Section 227 of Cr.P.C., in C.M.P.No.129 of 2014 in S.C.No.41 of 2014 on the file of the learned Chief Sub-Judge, Dharapuram, Thiruppur District.

2. The case of the prosecution is that one Sun.V.Natarajan has given complaint against four unknown persons stating that they have caused damage to a flux Board. Based on the said complaint, a case was registered in Crime No.5820 of 2010 for the offence under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (hereinafter referred to as TNPPDL Act). Thereafter, the petitioner was arrested and remanded to judicial custody for 20 days. After investigation, a charge sheet has been filed under Section 3(1) of TNPPDL Act. Since the offence alleged is exclusively triable by a Court of Sessions, the same was committed and pending trial before the Learned Sub Judge, Dharapuram.

3. According to the revision petitioner, though in the FIR, it has been stated that Flux Board has been torned, there was no statement about the commitment of mischief by fire or any explosive substance intending to cause damage to any property in order to invoke Section 4 of TNPPDL Act. Further in the FIR, it is stated that the damage has been caused by some unknown persons. Nowhere in the FIR, the petitioner's name finds place. But, according to the petitioner, he was arrested by invoking Section 4 of the TNPPDL Act. Since it is non bailable offence, he was kept in custody for 20 days unlawfully and thereafter, he got bail.

4. The learned counsel for the revision petitioner submitted that the petitioner is a human activist and involved himself in the activities concerning Society and several petitions were given under the right to Information Act, and one of the information also sought for from the respondent, and, therefore, in order to wreak vengeance, he has been falsely implicated in the case. The learned counsel for the revision petitioner further submitted that flux board has been fixed illegally without the permission of the authorities and it is in violation of the Division Bench of this Court. It is submitted by the learned counsel that the authorities, namely, the respondent police, have misused their power and, therefore, the discharge petition has been filed but the court below, without considering the above vital aspect, has dismissed the petition, which is not correct.

5. The learned Public Prosecutor submitted that FIR is only an encyclopaedia and since there was no ground made out to invoke Section 4 of TNPPDL Act, the charge sheet has been rightly filed by invoking Section 3(1) of TNPPDL Act. The Court below, after considering the entire materials placed before it, has come to the conclusion that the matter has to be decided only at the time of trial and rightly rejected the petition filed by the petitioner. Hence, he would pray for dismissal of the Criminal Revision Case.

6. Heard the learned counsel for the petitioner and the learned Government Advocate and perused the records.

7. The main crux of the argument is that the Court below failed to note that initially case was registered under Section 4 of TNPPDL Act and after investigation the respondent police filed the charge sheet under Section 3 (1) of TNPPDL Act.

8. Admittedly, the matter is pending before the Sub Court, Dharapuram. The petitioner, in the discharge petition filed by him under Section 227 Cr.PC., has sought for various reliefs and, therefore, the court below has rightly dismissed the said petition. But at the same time, the petitioner's right have to be safeguarded as he has raised valid point. As rightly pointed out by the learned

counsel for the revision petitioner, at the time of presenting complaint, the complainant has only stated that the flux board has been torned and there is no mention about the commitment of mischief by fire or any explosive substance intending to cause damage to the property to attract Section 4 of the TNPPDL Act. The Courts below failed to take into consideration the said valid point. However, mere alteration from Section 4 of TNPPDL Act to Section 3 of TNPPDL Act, will not vitiate the entire criminal proceedings. Therefore, definitely, the petitioner has to face trial.

9. Since S.C.No.41 of 2014 is pending before the Court below, the petitioner is at liberty to raise all the grounds raised in this petition before the Court below at the time of trial. The learned Sub Judge, Dharapuram, Thiruppur, is directed to consider the above vital points raised by the petitioner at the time of trial, as there is no iota of evidence with regard to commitment of mischief by fire or any explosive substance intending to cause damage of the property, and dispose of the case in S.C.No.41 of 2014. It is made clear that the Court below shall pass orders independently, without taking note of the observation made by this Court.

The Criminal Revision is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

ga

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Dharapuram Police Station
Dharapuram
Tiruppur District

2. Sub-Judge Dharapuram,
Thiruppur District

+ 1 cc to Mr.C.D.Johnson, Advocate SR 19716

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Cr1.R.C.No.100 of 2015