

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.20521 of 2015

and

M.P.Nos.1 & 2 of 2015

D.Ganesan

... Petitioner

Vs

1.D.Perumal

2.Selvi

3.The State of Tamil Nadu,
Rep. By the Inspector of Police,
Yethapur Police Station,
Salem District.

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed in C.R.P.No.57 of 2013 on the file of the learned III Additional District Judge, Salem dated 26.02.2014.

For Petitioner : Mr.C.K.M.Appaji

For R.3 : Mr.C.Emalias,
Additional Public Prosecutor

For R.2 : No Appearance

ORDER

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the third respondent.

2.This petitioner is the defacto complainant in C.C.No.117 of 2012 in which, the accused are facing trial for offence under Sections 294(b), 427 and 506(ii) I.P.C., before the file of the learned Judicial Magistrate No.1, Attur

3.After the final report was filed, the petitioner filed a petition in C.M.P.No.5012 of 2012 in C.C.No.117 of 2012 for a direction to the learned Judicial Magistrate to take cognizance of the offence under Section 3 of the Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992.

4.The learned Judicial Magistrate issued notice to the accused and the prosecution and after hearing both sides, dismissed C.M.P.No.5012 of 2012 on 23.07.2013. Aggrieved by the order passed by the learned Judicial Magistrate, the petitioner herein approached the Revisional Court in C.R.P.No.57/2013. It appears that C.R.P.No.57/2013 was dismissed for default for non representation on behalf of the petitioner by the learned III Additional District Judge, Salem on 26.02.2014. Challenging the same, the petitioner is before this Court with this petition under Section 482 Cr.P.C.

5.In the considered opinion of this Court, this petition is not maintainable inasmuch as the petitioner himself has no locus standi to file a petition before the trial Court for a direction to the learned Judicial Magistrate to take cognizance of an offence, as sought by him. Under Section 190 Cr.P.C., the Magistrate is empowered to take cognizance for offences disclosed in the police report and this judicial function cannot be interdicted by the defacto complainant.

6.Ofcourse, during the course of trial, the trial Court always has the power to alter the offences. Therefore, in the considered opinion of this Court, this petition is devoid of merits and accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The III Additional District Judge,
Salem.

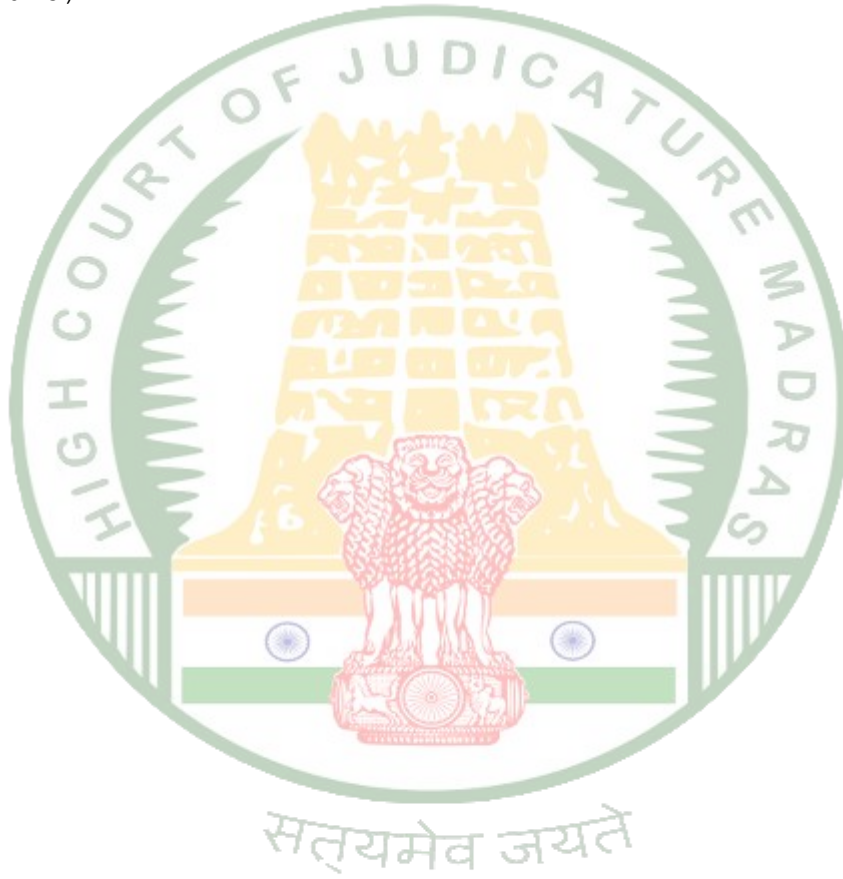
2.The Judicial Magistrate No.I,
Attur.

3.The Inspector of Police,
Yethapur Police Station,
Salem District.

4.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.20521 of 2015

VSN(CO)
CA(31/08/2015)



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