



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

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CRL.O.P. (MD) No.2856 of 2017
and CRL.M.P. (MD) No.2185 and 2186 of 2017

Paster Gideon Jacob : Petitioner

-Vs-

- 1.State represented by
The Inspector of Police,
K.K.Nagar Police Station,
Trichy City. : 1st Respondent/Defacto Complainant
- 2.The Assistant Commissioner,
Trichy City Municipal Corporation,
Ariyamangalam Division,
Tiruchirappalli. : 2nd Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to the S.C.No.125/2015 for offences on the file of Learned Chief Judicial Magistrate, Trichy and quash the same.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel for M/s.K.Samidurai
For Respondents : Mr.A.P.Balasubramani
Government Advocate (Crl. Side)

O R D E R

This petition has been filed seeking quashment of the proceedings in S.C.No.125/2015, on the file of Court of Chief Judicial Magistrate, Trichy.

2.On the complaint lodged by the Assistant Commissioner, Trichy Corporation, a case in Crime No.20 of 2014 was registered by the first respondent police on 06.01.2014, under Section 3(1) of Prevention of Properties (From Damages and Loss) Act and after completion of investigation, a final report was filed and the case is now pending in S.C.No.125 of 2015 before the Chief Judicial Magistrate, Trichy, challenging which, the petitioner is before this Court.

3.Heard Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner, and Mr.A.P.Balasubramani, learned Government Advocate appearing for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

4.In the charge sheet, it is averred that the petitioner was running a prayer hall without planning permission, in Trichy and



he had damaged and caused obstruction to the running drainage channel on 20.10.2013. Hence, the F.I.R. and the consequential charge sheet.

5.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner submitted that the damage caused to the property, was hardly to the tune of Rs.6,500/- and subsequently, within a month, the petitioner himself has built a over-bridge across the channel and therefore, no useful purpose will be served, if the prosecution is permitted to go on.

6.I am of the view that the said argument cannot be countenanced for the simple reason that the damage has taken place to public property and though the value of the damage may be very less, nevertheless, the offence is under Section 3(i) of the Prevention of Properties (From Damages and Loss) Act and there are prima-facie materials for proceeding with a full-fledged trial. The fact that subsequently, the Trichy Corporation granted permission to build a over bridge may be a mitigating circumstance for deciding the quantum of sentence, in the event of prosecution proving the case beyond reasonable doubt as against the petitioner. However, in a petition under Section 482 Cr.P.C., disputed facts cannot be looked into.

7.In the result, this Criminal Original Petition is dismissed with liberty to the petitioner to raise all the points before the trial Court. Consequently, connected Miscellaneous Petitions are closed.

8.Incidentally, this Court notices that the case is pending before the Chief Judicial Magistrate, Trichy. In the considered opinion of this Court, under Section 8 of the Tamil Nadu Prevention of Properties (from Damages and Loss) Act, the trial has to be conducted before the Sessions Court and not before the Assistant Sessions Court. Therefore, in exercise of power under Section 482 Cr.P.C., this Court hereby transfers S.C.No.125 of 2015 from the file of the learned Chief Judicial Magistrate, Trichy to the file of the learned Principal Sessions Judge, Tiruchirappalli, who is competent to try the case. The Chief Judicial Magistrate, Tiruchirappalli is directed to send the case records within two weeks from the date of receipt of a copy of this order, to the Principal Sessions Judge, after binding over the accused for his appearance before the said Judge. Thereafter, the personal appearance of the petitioner before the trial Court shall be dispensed with, except at the time of framing of charges, for questioning under Section 313 Cr.P.C. and on the day of judgment, on condition that he engages an advocate on special vakalat before the Trial Court and give an undertaking that he will not dispute his identity and his counsel will cross-examine the witnesses and cross-examine the day when they are examined in chief. As and when his presence is necessary, the Trial Court shall issue notice to him through his counsel on record for his appearance.



9. Whatever stated above is only to decide this petition. However, the Principal Sessions Judge, Trichirappalli, without being influenced by the observations made by this Court, shall dispose of the case on merits and in accordance with law.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge, Tiruchirappalli.

2. The Chief Judicial Magistrate, Tiruchirappalli.

3. The Inspector of Police,
K.K. Nagar Police Station,
Trichy City.

4. The Assistant Commissioner,
Trichy City Municipal Corporation,
Ariyamangalam Division,
Tiruchirappalli.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K. Samidurai, Advocate, SR.14747

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SJ

KK-JC-SAR3-06.04.2017-3P-7C