



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2017

CORAM:

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THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.299 of 2017

and

CRL MP(MD)Nos.2781 & 2782 of 2017

S.H.Zakir Hussain

: Petitioner

Vs.

The State Rep.By
The Inspector of Police,
Arumuganeri Police Station,
Arumuganeri,
Thoothukudi District
(Crime No.46 of 2014)

: Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to pass an order, revising the order made in Crl.M.P.No.96 of 2017, dated 27.02.2017 passed by the learned II Additional District and Sessions Judge, Thoothukudi in Special Case No.41 of 2017 of dismissing the petitioner's application having been filed for his dischargement in the crime as registered by the respondent Police vide Crime No.46 of 2014 on their file for the offences punishable under Section 447 of Indian Penal Code r/w Section 3 of TNPPDL Act forthwith.

For Petitioner

: Mr.N.Mohideenbasha

For Respondent

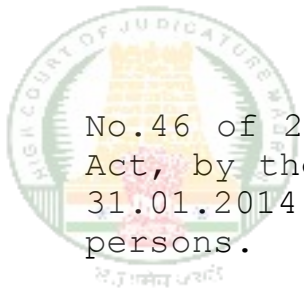
: Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

O R D E R

This Criminal Revision has been filed praying to revise the order made in Crl.M.P.No.96 of 2017, dated 27.02.2017, passed by the learned II Additional District and Sessions Judge, Thoothukudi in Special Case No.41 of 2017 of dismissing the petitioner's application for his discharge in Crime No.46 of 2014, for the offences punishable under Section 447 of Indian Penal Code r/w Section 3 of TNPPDL Act.

2. The Criminal Revision is taken up for final disposal at the admission stage itself, with the consent of either side.

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner herein is the first accused in S.C.No.41 of 2017 pending on the file of the learned II Additional District and Sessions Judge, Thoothukudi. FIR has been registered in Crime

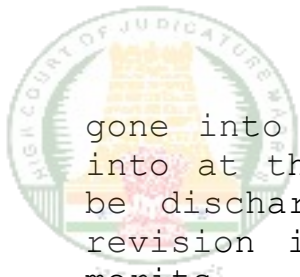


No.46 of 2014, under Section 447 of IPC., and Section 3 of TNPPDL Act, by the respondent, based on the written complaint received on 31.01.2014 against the petitioner / A1 and 3 named accused persons.

4. The case of the prosecution is that the accused persons unlawfully trespassed into the landed property surrounded by with a compound wall belonging to one S.A.Mohammed Farook, who is in abroad. The elder brother of the defacto complainant, who is incharge and also maintaining the properties and cut down the trees and caused damage worth about to Rs.5,00,000/- by demolishing 6 feets height and at about 22 feets length of the compound wall by JCP with the help of the accused persons. After completing the investigation, final report was laid and taken on file as Special Case No.41 of 2017, pending on the file of the learned II Additional District and Sessions Judge, Thoothukud. The petitioner after appearing in the said case filed an application in CrI.M.P.No.96 of 2017, under Section 239 of Cr.P.C., for discharging of the petitioner / A1 from the case before the trial Court and the said petition was dismissed after hearing both sides by the said Court on 27.02.2017. Aggrieved by the order of dismissal, the petitioner / A1 has preferred the present Revision before this Court, for the aforesiad relief.

5. The learned counsel appearing for the revision petitioner would submit that the date of occurrence was not pleaded anywhere in the FIR and also in the compliant, which is fatal to the prosecution and the petitioner is also one of the co-sharer of the disputed property and hence, invoking the penal provision of Section 447 and Section 3 of TNPPDL Act, is not legally sustainable and the fraudulent act of obtaining patta in respect of the disputed property has been nullified by the petitioner in the manner known to law and the records pertaining to the disputed property stands in the joint name of the petitioner and the defacto complainant and also on the date of alleged occurrence, the petitioner was in sick and suffering from serious ailments and the alleged participation in the crime by the petitioner is not all true and hence, the impugned order of dismissal of discharge petition is liable to be set aside.

6. The learned Additional Public Prosecutor appearing for the respondent would submit based on the counter affidavit by the respondent that the date of occurrence on 26.01.2014 has been clearly mentioned in Section 161(3) of Cr.P.C., statements of the eyewitnesses examined during the investigation and the petitioner is charged under Section 447 of IPC., and Section 3 of TNPPDL Act, perusing all the materials and documents placed before the Investigating Officer by the complainant and the petitioner has sent documents to show his absence on the alleged date of occurrence due to his serious ailments before the Investigating officer and that the defence raised by the petitioner has been



gone into only at the time of trial and the same cannot be gone into at the time of framing of charges and the petitioner cannot be discharged based on mere averments and hence, this criminal revision is liable to be dismissed, as the same is devoid of merits.

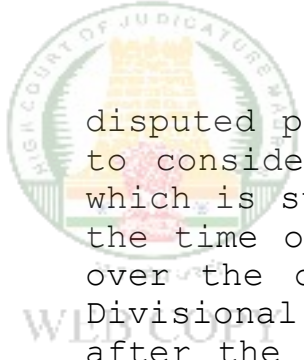
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7. Perused the materials available on records. Heard and considered the rival submissions made by either side.

8. Final report was laid on 09.06.2015 before the trial Court against the petitioner and 3 accused persons for trespassing and demolishing the northern east-west compound wall and cutting the trees found in the property in question and caused damage to the worth about to Rs.1,44,560/-, for the offences punishable under Section 447 of IPC, and Section 3 of TNPPDL Act. The final report reveals the fact that the disputed lands surrounded with 6 feets height compound wall belonged to one Mohammed Farook and his wife and the said land is maintained by the complainant, who is the brother of the said Mohammed Farook and while the defacto complainant gone to Chennai and on 26.01.2014 at about 10.00 a.m., in the absence of the complainant, the accused persons trespassed into the said property unlawfully and damaged the northern side of the compound wall by JCP and also cutting the trees and caused damage worth about to Rs.1,44,560/-. As per the charge sheet, Section 161(3) Cr.P.C., statements of 14 witnesses were recorded and filed along with patta copies and other documents before the Court.

9. Hearing the alleged occurrence over phone from the wife of the Mohammed Farook, the complainant came and lodged the complaint against the accused persons. The alleged date of occurrence ie., 26.01.2014 came to light only during the examination of the eyewitnesses of the said occurrence on investigation. The recorded statement under Section 161(3) of Cr.P.C., of the eyewitnesses and the defacto complainant disclose the date of occurrence as 26.01.2014 during investigation and also the ownership of the disputed land of Mohammed Farook, who was in abroad and maintained the disputed lands by the defacto complainant on behalf of that person. Hence, non mentioning the date of occurrence in the FIR is not fatal to the prosecution at this stage. The statements of Village Administrative Officer Kayalpattinam South and the Deputy Thasildar, Tiruchendur were recorded under Section 161(3) Cr.P.C., in respect of the ownership and patta of the property.

10. Petitioner claims ownership over the disputed property as co-owner, as per the proceedings of the Revenue Divisional Officer, Tiruchendur, dated 05.02.2016 that is only after filing the case before the Court. The said proceedings of the cancellation of earlier patta was passed in the absence of Mohammed Farook, who is the alleged to be the owner of the



disputed property, as per the final report. The trial Court has to consider the materials on record produced by the prosecution, which is sufficient grounds for proceedings against the accused at the time of framing charges. The alleged crime of the petitioner over the disputed property under the proceedings of the Revenue Divisional Officer, dated 05.02.2016, which came into existence after the filing of the final report cannot be gone into at this stage. The defence of alibi on the date of occurrence raised by the petitioner also cannot be gone into at the time of framing of the charge.

11. Considering the above facts and circumstances of the case and also the grounds alleged for discharge from the pending case, this Court is not inclined to interfere with the findings of the Court below in dismissing the CrI.M.P.No.96 of 2017, dated 27.02.2017 and the impugned order of dismissal needs no interference by this Court.

12. In the result, the Criminal Revision Case stands dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The II Additional District and Sessions Judge,
Thoothukudi

2.The Inspector of Police,
Arumuganeri Police Station,
Arumuganeri, Thoothukudi District

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

4.The Record Keeper,
Criminal Record Section
Madurai Bench of Madras High Court.

CrI.RC(MD)No.299 of 2017
Dated:20.12.2017