

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.8640 of 2017 and
CrI.M.P.Nos.6158 & 6159 of 2017

- 1.Aswin
- 2.Sivaraj
- 3.Ahmed

... Petitioners/Accused 1 to 3

Vs.

- 1.Inspector of Police,
B1, City Central Police Station,
Udhagamandalam,
Nilgiris District

- 2.Meenakshi Sundaram

..Respondents/Complainant/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records of the criminal proceeding in P.R.C.No.23 of 2016 on the file of learned Judicial Magistrate, Uthagamandalam Nilgiris District and quash the same against the petitioners.

For Petitioners : Mr.P.M.Duraiswamy

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for R1
: Mr.K.V.Sridharan for R2

ORDER

This petition has been filed to quash the proceedings in P.R.C.No.23 of 2016 on the file of learned Judicial Magistrate, Uthagamandalam Nilgiris District.

2. The learned counsel for the petitioners submitted that the petitioners are A1 to A3 and they have been charged for the offences under Sections 147, 148, 323, 324, 506(ii), 34 r/w 149 & 307 I.P.C. & Section 3 of TNPPDL Act r/w Section 114 I.P.C. He submitted that there is no prima facie made out as against the petitioners to take cognizance for the above said offences under Section 307 I.P.C. To attract the offence under Section 307 I.P.C. there is absolutely no ingredients in the charge. The wound certificate of the victims reflected that injuries sustained by the victims are simple in nature. The victims also did not say anything about the injuries sustained by them while the petitioners allegedly attacked the victims. He further submitted that to attract offence under Section 307 I.P.C. there is no specific overt act as against the petitioners and the first respondent did not even seize any material in the 'Seizure Mahazar' to attract under Section 3 of TNPPDL Act. There is no material evidence to show that the petitioners caused damage to the second respondent water shed to the tune of Rs.20,000/- and there is no material to assess damage as alleged by the prosecution. He further submitted that there are completely contravention between the accident register of LW1 to LW3. The LW1 states that assault by 15 unknown person using hands, legs and wooden log. LW2 states that assault by 12 unknown persons and LW3 states about two known persons. Whereas time of accident report registered at about 12.30 p.m. on 24.03.2016 and First Information Report registered at about 09.00 a.m. on 24.03.2016. Therefore, First Information Report specifically mentioned the accused persons' names and registered as against total 16 persons. Thereafter they went to hospital for treatment, there they stated as above.

3. Further he submitted that the second petitioner herein filed writ petition before this Court on 14.07.2016 for removal of encroachments made by the second respondent herein on the Kundha House Municipal Road adjoining his immovable property in W.P.No.24168 of 2016. Thus on 14.07.2016 this Court by order dated 14.07.2016 directed the District Collector, Nilgiris District to consider the representation of the petitioner with regard to removal of encroachments in accordance with law with opportunity to personal hearing within a period of three months from the date of receipt of copy of the Order. Accordingly, the Commissioner, Udagamandalam Municipality issued show cause notice on 15.07.2016 to the second respondent herein. Thereafter, the second respondent filed writ petition on

30.07.2016 for direction to consider his representation seeking regularisation towards regulation of water connection for encroached shed. Further he also categorically stated in the affidavit filed in support of the main petition, he did not whisper about the alleged occurrence committed by the second petitioner herein and other accused persons. Therefore, the entire allegation is false and only to escape from the clutches of law, the alleged complaint has been foisted as against the petitioners and he sought for quashment of the entire proceedings in P.R.C.No.23 of 2016.

4. Per contra, the learned counsel for the second respondent complainant submitted that the petitioners along with the other accused persons with common intention entered into the shed of the second respondent and demolished completely and it is worth about Rs.20,000/-. Further he submitted that they also attacked the watchman of the shed and LW1 and LW2 when they intercepted the illegal action of the petitioners. Therefore the first respondent rightly registered the case and filed final report. Therefore, he sought for dismissal of the quash petition.

5. The learned Additional Public Prosecutor submitted that the petitioners and others committed offence under Sections 147, 148, 323, 324, 506(ii), 34 r/w 149 & 307 I.P.C. & Section 3 of TNPPDL Act r/w Section 114 I.P.C. Though the second petitioner submitted representation to remove the encroachment of the second respondent, they cannot take law into their hands and remove the encroachments by the second respondent. Therefore, he sought for dismissal of this petition.

6. Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor and the learned counsel for the second respondent.

7. There are totally 16 accused in which the petitioners are arrayed as A1 to A3 and they are charged for the offence under Sections 147, 148, 323, 324, 506(ii), 34 r/w 149 & 307 I.P.C. & Section 3 of TNPPDL Act r/w Section 114 I.P.C. On perusal of records it shows that the second petitioner submitted representation to remove the encroachments made by the second respondent before the District Collector, Nilgiris District and filed writ petition in W.P.No.24168 of 2016. This Court

directed the District Collector to consider his representation to remove the encroachments made on Kundha House Municipal Road by conducting enquiry after giving opportunity of personal hearing to the parties concerned within a period of three months from the date of receipt of a copy of the Order by an order dated 14.07.2016. To comply the said order the Commissioner, Udagamandalam Municipality issued show cause notice on 15.07.2016 to remove the encroachments made by the second respondent. It is also seen that the second respondent defacto complainant filed writ petition before this Court in W.P.No.27454 of 2016 for the relief of regularisation towards regulation of water connection for the shed put up by the second petitioner namely the encroachment. Though the second respondent averred about the second petitioner herein in Paragraph 3, he did not whisper about the alleged occurrence namely the removal of encroachments by the petitioners and also assault by them. The show cause notice as well as the writ affidavit show that the alleged occurrence itself is doubtful.

8. It is also seen from the wound certificate of LW1 to LW3 dated 24.03.2016 recorded at 12.30 p.m., 12.45 p.m. and 04.10 p.m. respectively and stated about the assault that they were attacked by 15 unknown persons, 12 unknown persons and two known persons respectively. Whereas in the complaint, it is stated that 16 known persons attacked them and it was registered on 24.03.2016 at about 09.00 a.m. The FIR is the first document and thereafter they went to hospital for treatment. There is a full of contradiction between LW1 to LW3 and also their version differ from the FIR. That apart, even from seeing the allegations as pointed out by the learned counsel for the petitioners there is no ingredients to constitute the offence under Section 307 I.P.C. The injuries sustained by the list of witnesses 1 to 3 are simple in nature. Even according to the prosecution when the petitioners and others entered into encroached portion of the second respondent, they demolished the entire shed and when LW1 to LW3 intercepted them, they allegedly attacked them. Therefore there is no material to attract under Section 307 I.P.C.

9. Insofar as under Section 3 of TNPPDL Act, the entire allegations are bald and vague and no specific overt act as against the petitioners and also no materials to substantiate the damage caused by the petitioners and others. It is also seen from the show cause notice issued by the Commissioner,

Udagamandalam Municipality and the writ petition filed by the second respondent complainant, there was no demolition at all on 24.03.2016 since the writ petition and the show cause notice issued by the revenue authorities only in the month of July 2016. Therefore, the charge for the offence under Section 307 I.P.C. and Section 3 of TNPPDL Act are not attracted as against the petitioners and it cannot be sustainable.

10. In view of the above discussions, this criminal original petition is partly allowed and the proceedings in P.R.C.No.23 of 2016 on the file of learned Judicial Magistrate, Uthagamandalam Nilgiris District is quashed insofar as the offence under Section 307 I.P.C. and Section 3 of TNPPDL Act alone. Insofar as the other offences are concerned, the learned Judicial Magistrate, Uthagamandalam, Nilgiris District is directed to proceed with the trial in P.R.C.No.23 of 2016 and complete the same within a period of six months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
B1, City Central Police Station,
Udhagamandalam,
Nilgiris District

2.The Judicial Magistrate,
Uthagamandalam Nilgiris District

3. The Chief Judicial Magistrate,
Uthagamandalam Nilgiris District

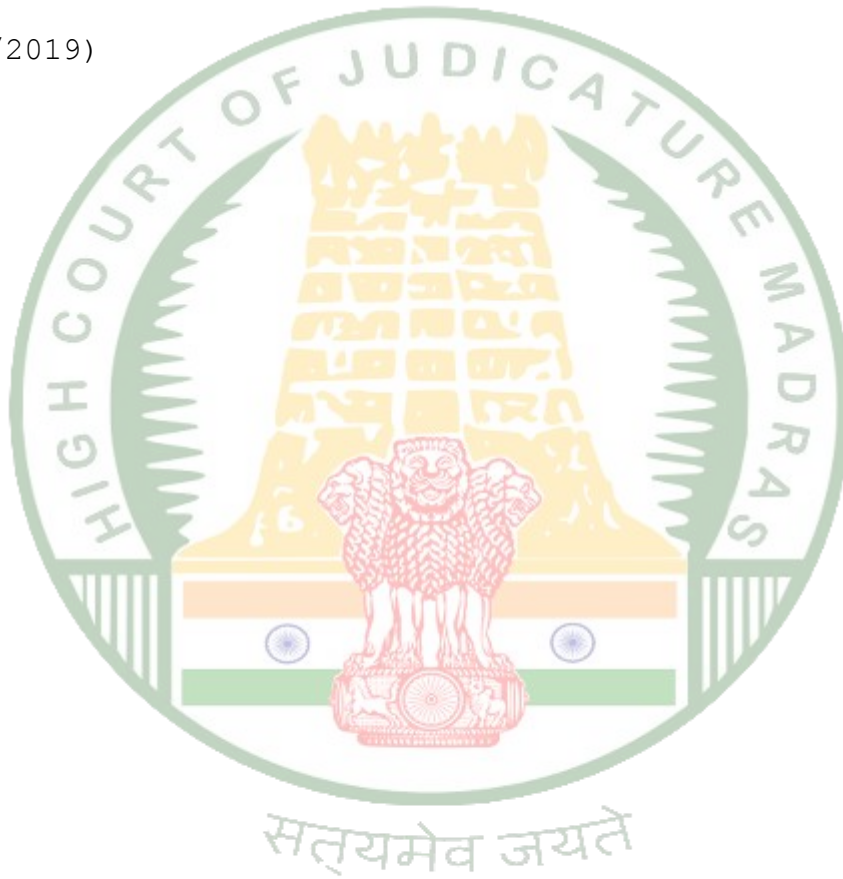
4.The Additional Public Prosecutor,
High Court of Madras

+1cc to Mr.P.M.Duraiswamy, Advocate SR.No.33879

+1cc to Mr.K.V.Sridharan, Advocate SR.No.34202

Cr1.O.P.No.8640 of 2017 and
Cr1.M.P.Nos.6158 & 6159 of 2017

GJ(CO)
GMY(07/06/2019)



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