

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2020

PRONOUNCED ON : 22.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

Crl.RC.No.1377 of 2017

and

Crl.M.P.No.13421 of 2017

R.Vijayalakshi

... Petitioner

..Vs..

1.The State represented by
The Inspector of Police,
Paravakottai Police Station,
Mannargudi Taluk,
Mannargudi - 641 001.

2.Karnan

3.Raja

4.Kathiravan @ Kalaignar

5.Giri

6.Nagarajan

7.Veerapandian

8.Azhagan @ Azhaghu

9.Thangaiyan

10.Kamaraj

11.Natha @ Pushpanathan

....Respondents

Prayer: Criminal revision filed under section 397 and 401 of Cr.P.C to call for the records in Crl.M.P.No.3005 of 2017 in C.C.No.239 of 2008 (on the file of the learned Judicial Magistrate No.II), Mannargudi and set aside the order dated 17.07.2017 in Crl.M.P.No.3005 of 2017.

For Petitioner : Mr.R.Vivekananthan
For Respondent 1 : Mr.K.Madhan
Government Advocate (Crl. Side)
For Respondents 2 & 5 : Mr.P.T.Perumal
For Respondents
3, 4, 6 to 9, 11 : Mr.V.Vargees Amal Raja

ORDER

(This case has been taken up for hearing through Video conferencing)

This criminal revision case is filed against the order passed in Crl.M.P.No.3005 of 2017 in C.C.No.249 of 2008 by the learned Judicial Magistrate No.II, Mannargudi.

2. Crl.M.P.No.3005 of 2017 was filed under section 323 Cr.P.C. praying the learned Judicial Magistrate for committal to the Sessions Court. C.C.No.249 of 2008 has been taken cognizance for the offence alleged to have been committed by the accused under section 148, 447, 427, 506(ii), 379 IPC read with 149 IPC. It is alleged in the petition that when PW1 was examined, she stated that accused caused damages to his properties and the loss amounts to Rs.25,00,000/-. In the said consideration, the learned Public Prosecutor prayed the Court for committal of the case to the Sessions Court.

3. On considering the submissions, evidence and materials placed before the Court, the learned Judicial Magistrate found that committal of the case to the Sessions Court cannot be decided on the basis of the evidence of PW1 and dismissed the petition. Apart from this reason, the learned Magistrate also found that section 427 IPC deals with the punishment to be imposed for the offence of mischief causing loss and damage to the amount of Rs.50 and it is not stated in this section as to the maximum value of the damage. The learned Judicial Magistrate also found that since the value of the damage is more, the prayer for committal of the case to the Sessions Court is not legally sustainable and when the damage has been caused in a dispute between two individual parties, no offence under Tamil Nadu Properties (Prevention of damage and loss) Act, 1992 is made out. On these reasons, the learned Judicial Magistrate dismissed the petition. Against the said order, this revision petition is preferred.

4. The learned counsel for the petitioner submitted that on the facts and circumstances of the case, an offence under Tamil

Nadu Properties (Prevention of damage and loss) Act, 1992 is made out. It is well settled proposition of law that under section 216 Cr.P.C, when sufficient materials have been brought on record, the court may alter or add any charge. The value of the property damaged is Rs.25,00,000/-. Therefore, the case has to be committed to the sessions court under section 323 Cr.P.C.

5.The point for consideration is that whether dismissal of the petition filed under section 323 Cr.P.C. is correct or not.

6. This Court raised a doubt as to whether the provisions of Tamil Nadu Properties (Prevention of damage and loss) Act 1992 is applicable to the damage caused to the properties in a dispute between two individual parties. The learned counsel for the petitioner and the learned Public Prosecutor fairly conceded that for the damage caused to the properties in dispute between two individual parties, provisions of Tamil Nadu Properties (Prevention of Damage and loss) Act 1992 is not applicable.

7. In this regard, learned counsel for the petitioner has also submitted a Judgment of this Court in CrI.A.(MD).No.273 of 2008 in the case of Logu @ Loganathan vs. State rep. by the Inspector of Police dated 27.09.2018. The perusal of this Judgment shows that the for the damage caused in a fight between some individuals, prosecution cannot be launched under section 3 (1) of TNPPDL Act. The relevant portion of the said order is extracted below for proper understanding:

" 8.The very object of the amendment makes it very clear that the Tamil Nadu Property (Prevention of Damage & Loss) Act, as stood before the amendment was enacted to prevent damage or loss caused to any private property during political parties or communal, language or ethnic agitation, demonstration or other activities. Originally, there was no provision to make a loss for the private property and also punishment for causing damage to the private property. Therefore, it was decided to include the private property in the amendment. The object of the Act makes it very clear that only during such political party agitations or ethnic agitations, demonstration or other activities or communal clash if any private properties are damaged to fix the liability on such groups, the amendment has been brought in. The object itself is to compensate the loss of the private properties for the damage caused by the said groups. Therefore, I am of the view that ordinary mischief caused by any individual, in a fight, they cannot be brought under Section 3(1) of the TNPPDL Act. It is a routine practice of the police to implicate even the individual, who allegedly causes damage of property

worth about hundred rupees under Section 3(1) of TNPPDL Act. Such practice should be stopped herewith. The object of the Act has to be given preference. Not in every case, Section 3(1) of TNPPDL Act can be invoked. Considering the above and also the facts of the case, this Court holds that the prosecution has failed to establish the guilt of the accused."

Therefore it is clear that the provisions of TNPPDL Act cannot be made applicable to the damage caused to the properties in a dispute between two individual parties.

8. The learned Assistant Public Prosecutor before the Trial Court filed the petition to commit the case to the Sessions Court mainly on the ground that the value of the damage caused to the property is more than Rs.25,00,000/- and therefore, the case has to be committed to Sessions Court for trial. Either under section 427 Cr.P.C or any other provisions of IPC nothing is stated about the fixation of jurisdiction of the Court for trial of criminal case on the basis of the value of the property damaged. Therefore, the very basis of the petition filed on the ground of value of the damaged property for committal of the case to the Sessions Court is not sustainable. Therefore, the petition filed under Section 323 Cr.P.C is not maintainable and it was rightly dismissed by the learned Judicial Magistrate. This Court finds no reason to interfere with the order of the learned Judicial Magistrate.

9. In this view of the matter, the order of the learned Judicial Magistrate is confirmed. Accordingly, this Criminal Revision Petition is dismissed. However, learned Judicial Magistrate-II, Mannargudi is directed to dispose the case within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate-II, Mannargudi

2.Do Through The Chief Judicial Magistrate
Tiruvallur.

WEB COPY

3. The Inspector of Police,
Paravakottai Police Station,
Mannargudi Taluk,
Mannargudi - 641 001.

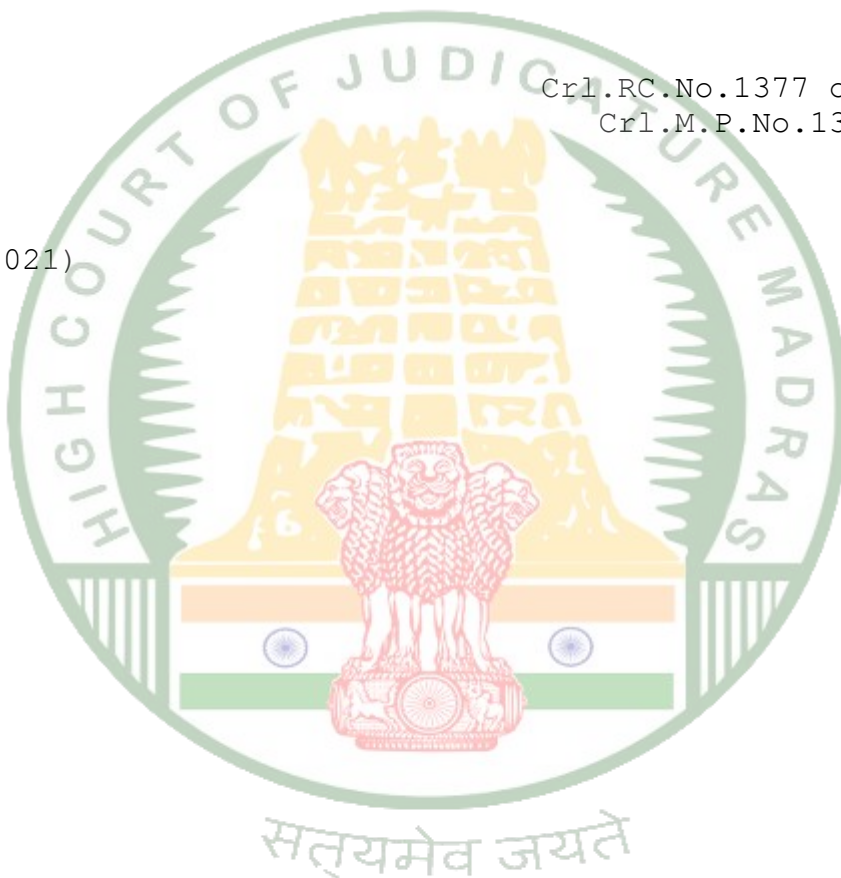
4.The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.R.Vivekananthan, Advocate sr 42726.

+1 CC to Mr.P.T.Perumal, Advocate sr 42777.

CrI.RC.No.1377 of 2017 and
CrI.M.P.No.13421 of 2017

EV(CO)
SP(10/02/2021)



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