



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2021

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.25684 of 2017 and
Crl.M.P.Nos.14768 & 14769 of 2017

1. K.P.Sainaba

2. Shajan Peter

...Petitioners/Accused 1 & 2

Vs

The State rep. by
Station House Office,
Mahe Police Station,
Union Territory of
Puducherry, Mahe.
(Crime No.54 of 2016)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the proceedings in C.C.No.12 of 2017 taken on the file for alleged offences under Section 336 of I.P.C., Section 3(1) of the Prevention of Destruction of Public Property Act r/w Section 34 of I.P.C. on the file of the Judicial Magistrate, Mahe and quash the same.

For Petitioners:Mr.R.Natarajan

For Respondent :Mr.V.Balamurugan,

Assistant Public Prosecutor (Pondicherry)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.12 of 2017 on the file of the Judicial Magistrate, Mahe for alleged offences under Section 336 of I.P.C., Section 3(1) of TNPPDL Act read wotj 34 of I.P.C.

2. The first accused is the owner of the property and the second accused is the contractor. The case of the prosecution is that A1 being the owner and A2 being the



contractor removed the earth from the plot in RS No.43/3 and constructed the compound wall. Subsequently, they have not provided any support to the above plots. As a result, on 06.07.2010, the compound wall constructed by the accused fell down and caused damage to the property. Thereby they have committed the offence under section 336 of IPC and Section 3 of TNPPDL Act.

3. The learned counsel for the petitioner mainly contended that the compound wall was constructed with proper permission in the month of April itself. Whereas, in the month of July, due to heavy down pour during the south west monsoon in Mahe, the compound wall fell down. Therefore, there was no intention whatsoever on the part of the petitioners to do any damage. Merely because the compound wall fell down, the petitioners cannot be prosecuted. The entire prosecution is nothing but abuse of process of law.

4. The learned Government Advocate [Criminal Side] submitted that the petitioners have to pay compensation, otherwise, quashment cannot be ordered.

5. While dealing with criminal offences, the Courts have to find out whether the prosecution has been properly launched. Normally the Court would not have ventured into the statements recorded by the prosecution. At the same time, the materials unearthed by the prosecution, in entirety taken would not constitute any offence, continuing the prosecution or forcing the parties to face the ordeal of trial in fact would infringe their fundamental right. The charge against the accused is that the accused has caused an act to endanger the personal safety of others. It is not the case of the prosecution that the damage of the compound wall has endangered the life of any person.

6. It is not in dispute that the compound wall has been constructed with proper permission. It is also not in dispute that the compound wall has fell down in heavy rain. Therefore, when the wall has fell down beyond the control of persons, without materials to show that the accused have acted so rashly or negligently so as to endanger human life of personal safety of others, they cannot be prosecuted under section 336 of IPC. When the entire materials perused, there is no evidence remotely to suggest that the accused acted so rashly or negligently. Similarly, it is not the case of the prosecution that the accused with an intent to cause danger to public or to any other person, caused destruction of the property. To attract the offence of mischief, there must be an intention on the part of the accused to cause destruction of the property. Whereas, in this case, the compound wall fell down due to heavy down pour



during south west monsoon, which is beyond the control of the accused. Therefore, this Court is of the view that there is no materials to show that the accused caused destruction of the property, to attract offence under section 3 of TNPPDL Act. Hence, continuing prosecution is nothing but a futile exercise and the entire prosecution case has to be quashed.

7. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.12 of 2017 on the file of the Judicial Magistrate, Mahe against the petitioners is quashed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

vrc
To

1. The Judicial Magistrate,
Mahe.
 2. Do Thro The Chief Judicial Magistrate, Pondicherry
 3. The Station House Office,
Mahe Police Station,
Union Territory of Puducherry,
Mahe.
 4. The Public Prosecutor(Pondicherry)
High Court, Madras 104.
- +2 Ccs to Mr.R.Natarajan, Advocate sr 63641

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GPL(CO)
SP(23/12/2021)