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Crl.A.No.1 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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1. Parimalam
2. P.Muthuramalingam

... Appellants

Vs

State by
The Inspector of Police,
Namagiripettai Police Station.
Namakkal District.

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Cr.P.C, against the sentence and order passed in S.C.No.61 of 2012 dated 13.12.2019, by the Principal Session Judge, Namakkal, convicting the appellants under Section 447 of IPC and sentencing to undergo 3 months R.I and fine of Rs.1,000/- each and i/d of fine to undergo 9 weeks S.I and under Section 3(1) of TNPPDL Act and sentencing to 3 years R.I and fine of Rs.1,00,000 each i/d of fine 9 months S.I and seeks to set aside the same.

For Appellants : Mr.C.Vidhusan
For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)



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JUDGMENT

This appeal is directed as against the Judgment passed in S.C.No.61 of 2012 dated 13.12.2019, by the Principal Session Judge, Namakkal, convicting the appellants under Section 447 of IPC and Section 3(1) of TNPPDL Act, 1992.

2. The case of the prosecution is that the defacto complainant owned land ad-measuring 2.53 acres comprised in S.F.No.197/1A3 along with a Sago Factory with all accessories and cement tanks at Seerapalli. He purchased the said property through a Court auction conducted by the Sub Court, Namakkal in REP.No.147 of 1989 in O.S.No.84 of 1989. The Court also confirmed the auction on 13.06.1990. Since then, it was in possession and enjoyment of the defacto complainant. He leased out the said property in favour of one Senthil, Nallan, Venkatesh and Manoharan. The said Manoharan had taken the said mill on lease. A1 is the daughter of one A.S.Periyasamy. A2 is the husband of A1. The said A.S.Periyasamy is the predecessor in title over the above said property, which was purchased by P.W.1. The accused are residing at Attur main road, Rasipuram. However, A1 was claiming that she and her family had share in the said Sago Factory, which was refused by the defacto complainant. Therefore, there was enmity between both the families. While being so, on



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23.10.2011 at about 02.00 p.m, the accused trespassed into the premises of the factory with an intention to cause damage and loss to the properties of the defacto complainant. They had demolished a cement tank of the Sago factory in the above said property with the help of JCB. The value of the demolished cement tank is said to be Rs.1,00,000/-. Hence, the complaint.

3. On receipt of the complaint, the respondent registered an FIR in Crime No.810 of 2011 for the offences punishable under Section 447 of IPC and Section 3(1) of TNPPDL Act as against the accused. After completion of investigation, the respondent filed a final report and the same has been taken cognizance, in S.C.No.61 of 2012 on the file of the learned Principal Session Judge, Namakkal.

4. On the side of the prosecution, they had examined P.Ws.1 to 8 and marked Exs.P1 to 16. The prosecution had also produced M.Os.1 to 3. On the side of the accused, no one was examined and they marked Exs.D1 to 3. The Court marked Exs.X1 to 11. On a perusal of oral and documentary evidences, the Trial Court found the appellants guilty for the offences punishable under Section 447 of IPC and sentenced them to undergo three months rigorous imprisonment, each with a fine of Rs.1,000/-, each, in default to undergo nine



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weeks simple imprisonment. The appellants were also found guilty for the offence under Section 3(1) of TNPPDL Act, 1992 and sentenced to undergo three years rigorous imprisonment, each and imposed fine of Rs.1,00,000/- each, in default to undergo nine months rigorous imprisonment, each. Aggrieved by the same, this present appeal.

5. The learned counsel for the appellants would submit that the alleged occurrence had taken place on 23.10.2011. Whereas, the complaint was lodged only on 02.11.2011, after a period of ten days. The prosecution failed to explain the delay in lodging the complaint. Therefore, it is fatal to the entire case of the prosecution. In fact, for the very same occurrence, the first appellant lodged a complaint as against the relatives of P.W.1 on 24.10.2011 and the same was registered in Crime No.807 of 2011. However, the respondent closed the said FIR as “mistake of fact” and charge sheeted the complaint lodged by P.W.1, which was lodged belatedly after a period of ten days from the date of occurrence. That apart, the property in which the alleged occurrence had taken place is not owned by P.W.1. The prosecution failed to prove that the said property is owned by P.W.1. According to P.W.1, the property was purchased from the Court auction.



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6. A perusal of the delivery receipts in respect of the said property revealed that the property is comprised in S.No.193/1A3. Whereas, the alleged occurrence had taken place in the property comprised in S.No.197/1A3. Therefore, the prosecution failed to prove the charge under Section 447 of IPC. He further submitted that insofar as the offence under Section 3(1) of TNPPDL Act is concerned, it would not at all attract as against the private property allegedly owned by P.W.1. The occurrence had not taken place at the circumstances which are categorically mentioned in the provisions of the above said Act. Therefore, the entire conviction cannot be sustained as against the appellants and it is liable to be set aside.

7. Per contra, the learned Government Advocate (Crl.Side) submitted that the accused trespassed into the property owned by P.W.1 and caused damage to the cement tank worth about Rs.1,00,000/-. In order to bring home the charges, the defacto complainant was examined as P.W.1. The subject property was leased out in favour of P.W.6. He deposed that the accused trespassed into the property and caused damage. Therefore, the prosecution categorically proved its case beyond any doubt. Therefore, he prayed for dismissal of the appeal.



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8. Heard Mr.C.Vidhusan, learned counsel appearing for the appellants and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent.

9. P.W.1 lodged a complaint on 02.11.2011 for the occurrence took place on 23.10.2011. There was a delay in lodging the complaint. P.W.1 deposed that he searched for the driver of JCB and as such there was delay in lodging the complaint. When the accused trespassed into the property and caused damage to the cement tank of the factory premises to the tune of Rs.1,00,000/-, it is not the duty of P.W.1 to trace out the JCB driver. It is the duty of the respondent to find out the driver of JCB who allegedly operated the JCB. Further, the vehicle allegedly caused damaged was not recovered by the respondent. The driver of the JCB was also not secured and was not impleaded as an accused in this case. The case of the P.W.1 is that he purchased the land comprised in S.No.193/1A3, ad-measuring 2.53 acres, situated at Seerapalli, through Court auction. However, the alleged occurrence had taken place in the land comprised in S.No.197/1A3. In order to ascertain the said fact, the Court marked Exs.X1 to X11. All the documents revealed that the land which was purchased through auction and the place of occurrence are different. Therefore, the prosecution failed to prove the charge under Section 447 of IPC as against



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the appellants.

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10. Further, it is seen that the first appellant lodged a complaint as against the relatives of P.W.1 and the same was registered in Crime No.807 of 2011, for the offences under Sections 147, 454 and 380 of IPC, which was marked as Ex.D3. Admittedly, the appellants and the defacto complainant are relatives. It seems that there was a property dispute between them. Therefore, the prosecution failed to prove the charge under Section 3(1) of TNPPDL Act.

11. In this regard, it is relevant to extract the provision under Section 3(1) of TNPPDL Act, which is hereunder,

3. Mischief causing damage to public property.—

(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

The "Property" means any property, movable or immovable or machinery owned by or in possession of, or under the control of any person including

- (a) the Central Government; or,
- (b) the State Government; or,
- (c) any local authority; or,
- (d) the Tamil Nadu State Electricity Board; or,
- (e) any University in this State; or



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- (f) any co-operative society including a land development bank registered or deemed to be registered under the Tamil Nadu Co - operative Societies Act, 1983; or
- (g) any corporate body constituted under any Act passed by Parliament or the Legislative Assembly of this State; or
- (h) any other corporation owned or controlled by the Central Government or the State Government; or
- (i) any institution concern or undertaking; or
- (j) any company.

12. The TNPPDL Act was enacted originally to protect the public property only. Subsequently it was amended, whereby, the private properties which were damaged in the course of agitation by the political parties or other such groups, either communal, religious, linguistic agitating against the State and in the course of the agitation, the vehicles and the properties, even though belonging to private parties, are also damaged, are included. But in the solitary incidents, the private properties, whether, building or vehicle, are not covered under the amendment. For those purpose, already provisions are available under the Indian Penal Code. The Investigating Officer mechanically invoked the provisions of the TNPPDL Act, which cannot be accepted by a Court of law, as it is against the legislation intended by the amendment brought by the State.

13. The object of the Act makes it very clear that only during such political party agitations or ethnic agitations, demonstration or other activities or



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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, this Court is of the view that ordinary mischief caused by any individual, in a fight, cannot be brought under Section 3(1) of the TNPPDL Act. It is 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.

14. Hence, the charge itself would not attract as against the appellants under Section 3(1) of TNPPDL Act. Therefore, the conviction and sentence imposed on the appellants under Section 447 of IPC and Section 3(1) of TNPPDL Act cannot be sustained as against them. Accordingly, the Judgment passed in S.C.No.61 of 2012 dated 13.12.2019, by the learned Principal Session Judge, Namakkal, is hereby set aside. The appellants are acquitted of all charges in S.C.No.61 of 2012 on the file of the learned Principal Session Judge, Namakkal. The appellant are directed to be set at liberty forthwith unless their custody is otherwise required in connection with any other case. The fine



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amount, if any, paid by the appellants shall be refunded. Bail bond, if any,
executed by the appellants shall stand cancelled.

15. In the result, this Criminal Appeal stands allowed.

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Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To



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1. The Principal Session Judge, Namakkal.

2. The Inspector of Police,
Namagiripettai Police Station.
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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