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Crl.A.No.292 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2022

CORAM

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

Crl.A.No.292 of 2018

Pandian

... Appellant

Vs

The Inspector of Police,
Rathinapuri Police Station,
Coimbatore District.
(Cr.No.867 of 2016)

... Respondent

Prayer:- Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment of convicting the appellant under Section 75(1)(c) of TNCP Act, 1888, a fine of Rs.1,000/- in default the accused shall undergo a period of imprisonment of one month and under Section 3(1) of TNPPDL Act, 1992, a period of imprisonment of one year and also to pay a fine of Rs.1,000/- in default the accused shall undergo a period of imprisonment of one month passed in S.C.No.43 of 2017 on the file of the learned Principal District Sessions Judge, Coimbatore, and consequently thereby allow this Criminal appeal.



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For Appellant : Mr.P.Murali
For Mr.M.Saravanakumar

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

JUDGMENT

This Criminal Appeal is directed as against the judgment dated 24.04.2018 passed in S.C.No.43 of 2017 by the learned I Additional District and Sessions Judge, Coimbatore, thereby convicting the appellant for the offence under Section 75(1)(c) of Tamil Nadu City Police Act, 1888 (herein after referred to as “the TNCP Act”), a fine of Rs.1,000/- in default the accused shall undergo a period of imprisonment of one month and under Section 3(1) of the Tamil Nadu Property (Prevention of Damages & Loss) Act 1992 (herein after referred to as “the TNPPDL Act”) a period of imprisonment of one year and also to pay a fine of Rs.1,000/- in default the accused shall undergo a period of imprisonment of one month.

2. The case of the prosecution is that on 14.09.2016, at about 15.15 hours, the appellant went to the bakery belonged to the defacto



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complainant and scolded him with filthy language. He also threatened him with dire consequences and in addition to that damaged the fridge, showcase and other articles kept in the shop by using wooden log. Hence, the defacto complainant lodged complaint and the same has been registered in Crime No.867 of 2016. After completion of investigation, the respondent filed final report and the same has been taken cognizance for the offence under Section 75(1)(c) of TNCP Act, Section 506(i) of IPC and Section 3(1) of TNPPDL Act, 1992.

3. On the side of the prosecution, they examined P.W.1 to P.W.7 and marked Ex.P.1 to Ex.P.6. The prosecution also produced material objects in M.O.1 & M.O.2. On the side of the appellant, no one was examined and no document has been marked. On a perusal of oral and material evidence, the trial found the guilty of the appellant for the offence under Section 75(1)(c) of TNCP Act, Section 506(i) of IPC and Section 3(1) of TNPPDL Act, 1992 . Aggrieved by the same, the present appeal.

4. The learned counsel appearing for the appellant submitted



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that there is no chain of circumstances to draw the conclusion that the appellant has committed the offence. The prosecution failed to prove the motive for the alleged occurrence by the appellant. P.W.1 and P.W.2 never whispered about the motive behind the crime. Therefore, without motive, the prosecution failed to prove the charge as against the appellant. That apart, even according to the case of the prosecution, the appellant entered into shop of the defacto complainant and damaged the articles. Therefore, the TNPPDL Act would not attract as against the appellant. Further the trial Court already acquitted the appellant for the offence under Section 506(ii) of IPC. Therefore, he prayed to allow the present appeal.

5. The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that the prosecution proved the case beyond all reasonable doubts. The prosecution had examined P.W.1 to P.W.7. P.W.1 and P.W.2 are the eye witnesses to the occurrence. P.W.1 is the owner of the bakery situated at 100 feet road, Coimbatore. P.W.2 was working as tea master in the bakery owned by the defacto complainant. Both are cogently and convincingly deposed to prove the charges framed



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as against the appellant herein. Therefore, the conviction passed by the trial Court doesn't warrant interference from this Court. Hence, he prayed to dismiss the present appeal.

6. Heard Mr.P.Murali, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent police.

7. According to P.W.1, he owned bakery at 100 feet road, Coimbatore. On 14.09.2016 at about 3.15 p.m., the appellant went to the shop and abused him using filthy language. He also damaged articles kept in the show and threatened him with dire consequences. The appellant caused damages to the fridge, show-case and other articles kept in the bakery. On the same day, P.W.1 lodged complaint and the said complaint is marked as Ex.P.1. The wooden log which was used by the appellant was marked as M.O.1 and the broken glass pieces were marked as M.O.2.

8. Insofar as the charge under Section 506(i) of IPC is concerned, the trial Court acquitted the appellant. However, for the offence under Section 75(1)(c) of the TNCP Act, the appellant was



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convicted and imposed fine of Rs.1,000/- in default to undergo imprisonment of one month. The appellant was also convicted for the charge under Section 3(1) of TNPPDL Act, and sentenced him to undergo imprisonment of one year and also pay a fine of Rs.1,000/- in default to undergo imprisonment of one month.

9. P.W.1 and P.W.2 deposed that the appellant entered into shop and scolded them with filthy language and also caused damage to the fridge, show-case and other articles in the bakery. Though the motive behind the crime was not established by the prosecution, it is true that the appellant entered into the shop and caused damages to the articles to the worth of Rs.90,000/-.

10. The only point for consideration is that, whether the appellant can be charged for the offence under Section 3(1) of TNPPDL Act or not?

11. In this regard, it is relevant to extract the provision under Section 3(1) of the TNPPDL Act as follows :-

“3. Punishment for committing mischief in respect of property.- Whoever,-(i) Commits mischief by doing any act in respect of any property and thereby causes damage or loss to



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such property to the amount of one hundred rupees or upwards;”

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
- (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 originally protected 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.



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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 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, they 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



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to be given preference. Not in every case, Section 3(1) of TNPPDL Act can be invoked.

14. In view of the above discussions, this Court finds that the prosecution failed to establish the guilt of the appellant for the offence under Section 3(1) of the TNPPDL Act. However, the prosecution proved its case for the charge under Section 75(1)(c) of the TNCP Act. Therefore, the victim is entitled for compensation. Accordingly, the conviction and sentence imposed on the appellant by the judgment dated 24.04.2018 in S.C.No.43 of 2017 by the learned I Additional District and Sessions Judge, Coimbatore, for the offence under Section 75(1)(c) of the TNCP Act is hereby confirmed and the conviction and sentence imposed for the offence under Section 3(1) of the TNPPDL Act, is hereby set aside. Further, the appellant is directed to pay a sum of Rs.1,00,000/- (Rupees one lakh only) as compensation payable to the defacto complainant viz., P.W.1 within a period of three weeks from today.

15. Accordingly, the Criminal Appeal stands partly allowed. Post



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the matter on 04.11.2022 for reporting compliance.

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14.10.2022

Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

rts

G.K.ILANTHIRAIYAN, J.

This matter is posted today before this Court under the caption “For reporting compliance”.

2. This Court, by the judgment dated 14.10.2022, partly allowed the appeal and directed the appellant to pay a sum of Rs.1,00,000/- as compensation to the defacto complainant viz., P.W.1, within a period of three weeks and adjourned the matter for reporting compliance.

3. Today, when the matter is taken up for hearing, no one is present on behalf of the appellant and hence this Court is inclined to modify the judgment dated 14.10.2022 and paragraph Nos. 14 & 15 of the judgment shall stand modified as follows :-



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“14. In view of the above discussions, this Court finds that the prosecution failed to establish the guilt of the appellant for the offence under Section 3(1) of the TNPPDL Act. However, the prosecution proved its case for the charge under Section 75(1)(c) of the TNCP Act. Therefore, the victim is entitled for compensation. Accordingly, the conviction and sentence imposed on the appellant by the judgment dated 24.04.2018 in S.C.No.43 of 2017 by the learned I Additional District and Sessions Judge, Coimbatore, for the offence under Section 75(1)(c) of the TNCP Act is hereby confirmed and the conviction and sentence imposed for the offence under Section 3(1) of the TNPPDL Act, is hereby set aside. Further, the appellant is directed to pay a sum of Rs.1,00,000/- (Rupees one lakh only) as compensation to the de-facto complainant viz., P.W.1 within a period of three weeks from today, in default to undergo simple imprisonment for a period of four weeks.

15. Accordingly, the Criminal Appeal Stands partly allowed.”

In other respects, the judgment dated 14.10.2022, shall remain unaltered.

10.11.2022

rts/ata



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To

1. The Principal District Sessions Judge,
Coimbatore.
2. The Inspector of Police,
Rathinapuri Police Station,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.,

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