



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.06.2022

PRONOUNCED ON : 10.06.2022

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.24541 OF 2019

&

CRL.M.P.NO.13026 OF 2019

C.Gunasekaran,
S/o.Late Chinnasamy Naidu,
Oornaidu Thottam,
Poochiyur Road,
Narasimmanaickenpalayam,
Coimbatore.

... Petitioner/Accused No.2

/versus/

1. State,
Rep. by Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.
Crime No.89 of 2014.

... Respondents/Complainant

2. Ramraj,
S/o.Duraisamy Naidu,
D.No.138/A, Sanganur Main Road,
Rayappa Nagar,
Coimbatore - 6.

... Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the impugned Final report No.222 of 2014 dated 07.01.2015 filed by the 1st respondent in PRC.No.59 of 2019, on the file of Judicial Magistrate-V, Coimbatore and quash the same and pass such further order.

For Petitioner : Mr.P.Dinesh Kumar
for Mr.D.Ravichander

For R1 : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

For R2 : No appearance



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O R D E R

The petitioner herein arrayed as 2nd accused in P.R.C.No.59 of 2019 on the file of Judicial Magistrate-V, Coimbatore, seeking quash of the final report.

2. The brief facts of the case is that one, Mr.Thangavel informed the respondent police on 22.11.2014 that three sons of Chinnasamy trespassed into his land with JCB and demolished the building which is under construction. Hence, case was registered in Crime No.589 of 2014 for the alleged offence under Sections 447 of I.P.C and 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (herein after referred as "TNPPDL Act 1992") as against three sons of Chinnasamy and Section 294(b), 447 of I.P.C and 3(1) of TNPPDL Act 1992 against the wife of Chinnasamy.

3. After completion of investigation, filed report filed and same was taken on file under P.R.C.No.14 of 2018. The petitioner herein, who is arrayed as 2nd accused shown as absconding accused, case against him was split up and numbered as P.R.C.No.59 of 2019.

4. In the quash petition, it is contended that, there was a property dispute between the defacto complainant and the family members of the petitioner. Mr.Chinnasamy, father of the petitioner gave power of attorney to the defacto complainant in respect of the property measuring one acre and later died. The petitioner herein, after his father demise, misusing the power of attorney deed, the defacto complainant trying to grab the property in this regard. Suit was filed by Chinnasamy, however same was dismissed, on his demise. Thereafter, fresh suit has been filed by the petitioner's mother who is the 4th accused and suit in O.S.No.1025 of 2013 is pending on the file of 1st Additional Sub Judge, Coimbatore. While so, in the disputed land, alleging that, the construction put up by the defacto complainant was demolished on the evening of 21.11.2014, a complaint was lodged and same has been taken up for investigation and final report filed with truncated facts.

5. According to the petitioner, the alleged act of demolishing the construction of the defacto complainant will not fall within the scope and ambit of Section 3 of TNPPDL Act, 1992, since the damage was not committed during procession, assembly, meeting and other similar activates. Further, he would also contend that alleged time of occurrence, the petitioner was not in the scene of occurrence, in fact, was in UAE.



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recognized Under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused."

10. Alibi is a defence for the accused which has to be proved in the manner known to law during trial. In this case, the genuineness of the travel documents has to be tested. Mere production of Airline ticket and passport without testing the veracity of the document and the content is not adequate to quash the case under Section 482 of Cr.P.C. The High Court cannot embark upon testing the evidence while considering a petition under Section 482 of Cr.P.C. Therefore, it is open to the petitioner herein to seek appropriate recourse before the Court below, before framing of charge, by producing the documents in support of plea of 'alibi' and file petition. If such petition is filed, the trial Court shall pass appropriate order in accordance with law.

11. With the above observation, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Judicial Magistrate-V, Coimbatore.
2. The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.33910

CrI.O.P.No.24541 of 2019
& CrI.M.P.No.13026 of 2019

CA(CO)
RLP(21/06/2022)