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Crl.O.P.No.23690 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2022

PRONOUNCED ON : 31.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23690 of 2022

Pavalayee

...

Petitioner

/vs/

State rep. by
The Sub-Inspector of Police,
Bhavani Police Station,
Erode District

...

Respondent

Prayer : This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 22.08.2022 passed by the learned Judicial Magistrate No.1, Bhavani in CMP No.2101 of 2022 in C.C.No.28 of 2022.

For Petitioner

... Mr. S. Viswanathan,
for M/s.Dass and Viswa Associates

For Respondent

... Mr. S.Santhosh,
Gov. Advocate (Crl. side),



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ORDER

This Criminal Original Petition has been filed to set aside the order passed by the learned Judicial Magistrate No.1, Bhavani in CMP No.2101 of 2022 in C.C.No.28 of 022, dated 22.08.2022.

2. The fact of the case is that on 30.09.2021, at about 12.05 hours, for cement plastering on the house of the petitioner/defacto complainant, she along with her daughter arranged Hollow Block stones in front of their house. At that time, at the instigation of Periyasamy @ Marasamy, the accused persons, namely, Muniappan, Sarasu, Boomathi, Ramayee, raised quarrel with the defacto complainant and her daughter, in which, they assaulted the defacto complainant as well as her daughter Valarmathi, thereby caused serious injuries to them. They have also damaged the window of the defacto complainant's house and CCTV camera. Since the petitioner and her daughter sustained injuries, they were admitted in the hospital for treatment, where, the respondent police recorded the statement of the defacto complainant and registered a case in Crime No.383 of 2021 for the offences under Sections 147, 294(b), 324 & 427 of IPC on 01.10.2021. After investigation, the respondent police filed the final report as against Muniappan, Sarasu and Poomathi, and the same was taken on file by the Judicial Magistrate No.I, Bhavani in C.C.No.28 of



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2022. Since the respondent police dropped the accused, viz., Ramayee and Marasamy in the final report, the petitioner had filed a petition in CMP No.2101 of 2022 under Section 319 of Cr.P.C. and sought to implead the dropped accused as accused persons to face trial along with the other accused and also to frame charge against them for the offences punishable under Section 3(1) of the TNPPDL Act.

3. The Trial Court, after considering the submission of the learned counsel for the parties, dismissed the petition on the ground that petition under Section 319 of Cr.P.C. for adding the accused persons at pre-trial stage is not permissible and only after recording the evidence alone maintainable. To support his reasoning, the Trial Court relied upon the judgment of the Hon'ble Supreme Court in the case of ***Hardeep Singh /vs/ State of Punjab (2014(3) SCC 92)***. The Trial Court also rejected the prayer for framing charges under Section 3(1) of TNPPDL Act as the dispute is between the private parties and the properties alleged to have been damaged by the accused are only private properties and only ordinary mischief has been made out and placed reliance in the order of this Court in ***Logu @ Loganathan /vs/ State rep. by the Inspector of Police, Taluk***



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Police Station, Thanjavur in Crl.A.(MD) No.273 of 2008, dated

27.09.2018. Aggrieved by the same, the present petition has been filed.

4. The learned counsel for the petitioner submitted that the trial Court had not properly appreciated the records and the statement of the main persons and had not properly considered the scope, mode and powers under Section 319 of Cr.P.C and not properly considered the judgment of the Hon'ble Supreme Court in the case of ***Hardeep Singh /vs/ State of Punjab (2014(3) SCC 92)***. He further submitted that Tamil Nadu Property (Prevention of Damage & Loss) Act 1992 is applicable even to the damage of the private properties. The accused damaging the properties of the defacto complainant, will be covered under the term "other activities" as stated in the amended Act 1994. Thus, pleaded to set aside the impugned order and reiterated the other grounds stated in the petition.

5. The learned Government Advocate (crl.side) justifying the order passed by the Trial Court contended that there is no sufficient reason for interfering in the impugned order and pleaded to dismiss the criminal original petition as it has no merit.

6. I have considered the matter in the light of the submissions made



by the learned counsel for both the parties.

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7. In the present Criminal Original Petition, the petitioner challenged the impugned order in C.M.P.No.2101 of 2022 in C.C.No.28 of 2022 on the file of the Judicial Magistrate No.1, Bhavani , as the persons named in the First Information Report were not charge sheeted.

8. Section 319 Cr.P.C. empowers the Court to proceed against any person, if it appears from evidence that such person has also committed the offence, for which, he can be tried together with other accused. Section 319 Cr.P.C. runs as follows :-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of,



the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

9. The word "evidence " according to Act Sub Section 1 of 319 Cr.P.C is used in an comprehensive. Five judges bench of the Hon'ble Supreme Court in ***Hardeep Singh /vs/ State of Punjab(2014 (3) SCC 92)*** in a reference considered the stage at which powers under Section 319 Cr.P.C. can be invoked and the materials on the basis of invoking the Power under Section 319 Cr.P.C. can be justified and the manner,in which powers under Section 319 Cr.P.C. have to be exercised and finally held that the word "evidence" in Section 319 Cr.,P.C has to be broadly understood and not literally as evidence brought during trial. The principle object of this provision is that the whole case against all the accused persons should be tried and disposed of expeditiously and simultaneously.

10. In the present case, the defacto complainant while giving



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complaint specifically stated that the accused Ramayee assaulted her with stone and in the 161 Cr.P.C. Statement also she has specifically stated that the accused Ramayee assaulted her with stone. She has also specifically stated that at the instigation of the accused Periyasamy @ Marasamy, the incident has taken place. Another injured person Valarmarthy in her 161 Cr.P.C. Statement specifically stated about the assault made by Ramayee.

11. Under this circumstances, the respondent police when filing the final report, dropped the accused Ramayee and Periyasamy @ Marasamy. Applying the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh (supra)***, the impugned order of the Trial Court is unsustainable and materially erred in dismissing the petition filed under Section 319 Cr.P.C. and refusing to issue summon to the dropped accused persons mentioned in the First Information Report to face the trial.

12. With regard to non framing of charges under Section 3(1) of the TNPPDL Act, the Trial Court relied upon the judgment of this Court in ***Logu @ Loganathan /vs/ State rep. by the Inspector of Police, Taluk Police Station, thanjavur in Crl.A.(MD).No.273 of 2008, dated 27.09.2018.*** The object of TNPPDL Act is as follows:



"The Tamil Nadu Public Property (Prevention of Damage and Loss) Act 1992 (Tamil Nadu Act 59 of 1992) was enacted to prevent widespread damages to public property by enacting a comprehensive legislation providing for punishments of the persons who actually cause damage or loss to the public property and to make the political parties or communal, language or ethnic groups which organised procession, assembly, meeting, agitation, demonstration or other activities liable to pay compensation in respect of damage or loss, caused to any public property during such procession, assembly, meeting, agitation, demonstration or other activities. Widespread damages to private property are also being caused during procession, meeting, agitation, demonstration or other activities organised by political parties or communal, language or ethnic groups. The provisions of the said Act do not provide for the payment of compensation and for the punishment in respect of the damage or loss caused to private property. It has, therefore, been decided to amend the said Act suitably providing for punishments of the persons, who actually cause damage or loss to the private property and to make the political parties or communal, language, or ethnic group which organised such procession, assembly, meeting, agitation, demonstration, or other activities liable to pay compensation in respect of damage or loss caused



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to any private property also.

The Trial Court rightly held that this case does not attract the offence under Section 3(1) of TNPPDL Act as it will attract only ordinary offence of mischief. Therefore, in this regard, the impugned order does not require interference.

13. In view of the above, the impugned order passed by the Trial Court is liable to be set aside as unsustainable with regard to dismissing the application under Section 319 Cr.P.C by adding the dropped accused. With regard to the framing of charges, the impugned order is confirmed. Thus, the Criminal Original Petition is dismissed with regard to non framing of charges under Section 3(1) of TNPPDL Act.

14. Considering the above facts and circumstances of the case, this Criminal Original Petition is partly allowed and the impugned order passed by the Trial Court is set aside with regard to the dismissing the application under Section 319 Cr.P.C by adding the dropped accused and with regard to framing charges under Section 3(1) of TNPPDL Act, this dismissed by confirming the impugned order passed by the Trial Court. The Trial Court is hereby directed to issue summon to the dropped accused, namely, Ramayee and Marasamy to face the trial along with other accused and



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frame suitable charges against them and dispose the case in accordance with law on its own merits based upon the evidence produced by the prosecution.

31.10.2022

mrp

To

1. The learned Judicial Magistrate No.1,
Bhavani .
2. The Sub-Inspector of Police,
Bhavani Police Station,
Erode District.
3. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

mrp

Pre-delivery Order
in
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