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CrI OP No. 23302 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 23302 of 2019
and
CrI.M.P. No. 12227 of 2019

1. Joseph Prabhudoss Anderson
2. Sathish Anderson ... Petitioners
Versus

1. State rep., by
Inspector of Police,
Kotagiri Police Station,
Kotagiri, The Nilgiris.
2. Mathivanan. ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the entire records pertaining to P.R.C. No. 2 of 2018 on the file of the learned Judicial Magistrate, Kotagiri and quash the same.

For Petitioners : Mr. B. Kumarasamy for
Mr. T. Senthilkumar.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.



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R2 – Notice served.

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ORDER

This Criminal Original Petition has been filed to quash the P.R.C.

No. 2 of 2018 on the file of the learned Judicial Magistrate, Kotagiri.

2. It is alleged in the final report that the defacto complainant has purchased a property in the year 2015 from one Abdulah and J.A.M. Yasar Arbath and they had fenced the property. While so, the petitioners had entered the property and caused damage to the fence and threatened the defacto complainant and others.

3. The learned counsel for the petitioner submits that it is a civil dispute and the disputed property belongs to the trust in which the petitioners are trustees. The power agent had misused the power of attorney and sold the property to K. Abdullah, J.A.M. Yaseer Arafath and others. Once they came to know of the said fact they filed suit in O.S. No. 5 of 2014 on the file of the District Judge, Uthagamandalam for declaration, declaring the sale deed executed by the power agent as null and void. The defacto complainant knowing about the pendency of the



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Suit had bought the property. He is trying to give a criminal colour to the civil dispute. The learned counsel for the petitioners further submitted that no public property was damaged and hence the offence under Section 3 (1) of Tami Nadu Property (Prevention of Damage and Loss) Act, 1992 is not made out. Further, there is no allegation with regard to the offence under Sections 447 and 506 (ii) of the Indian Penal Code.

4. Though notice was served to the second respondent / defacto complainant and the name has been printed in the cause list, none has entered appearance on behalf of the second respondent / defacto complainant.

5. The learned Additional Public Prosecutor appearing for the first respondent submitted that there are materials to show that the petitioners had trespassed into the property which is in possession of the second respondent / defacto complainant and caused damage to the fence erected by the second respondent / defacto complainant and drew the attention of this Court to the statement of Listed Witness No.1. Further, the learned Additional Public Prosecutor appearing for the first respondent had fairly conceded that no public properties were damaged in the occurrence.



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6. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and perused the records.

7. In view of the fact that admittedly, there is no damage to any public property, the offence under Section 3 (1) of the Tami Nadu Property (Prevention of Damage and Loss) Act, 1992 is not made out. Even according to the final report, the fence erected by the second respondent / defacto complainant was only damaged. Therefore, the final report in respect of the offence under Section 3 (1) of the Tami Nadu Property (Prevention of Damage and Loss) Act, 1992 is liable to be quashed.

8. As regards the other offences, the points raised by the petitioners are factual in nature and hence, this Court is not inclined to entertain this petition in respect of the offence under Sections 447 and 506 (ii) of the Indian Penal Code. Since no offence under Section 3 (1) of the Tami Nadu Property (Prevention of Damage and Loss) Act, 1992 is made out, the learned Magistrate before whom the committal proceedings are pending may try the offences under Sections 447 and 506 (ii) of the



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Indian Penal Code.

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9.The learned counsel for the petitioners submitted that the petitioners are aged persons and prayed for dispensing with their personal appearance before the trial Court. The appearance of the petitioners before the trial Court is dispensed with unless the learned Magistrate considers their presence necessary for the progress of the trial.

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

14.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
Kotagiri Police Station,
Kotagiri, The Nilgiris.

2. The Judicial Magistrate,



Kotagiri.

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3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

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