



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2023

Pronounced on : 11.10.2023

CORAM:

THE HONOURABLE **MR. JUSTICE K.K.RAMAKRISHNAN**

Crl.O.P.(MD) No.9517 of 2018
and
Crl.MP(MD)Nos.4205 & 4206 of 2018

1.Marthandam

2.M.Rajesh

3.Paul Durai

...Petitioners/Accused No.1 to 3

Vs.

1.The State Rep by
The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.
(Crime No.68 of 2013)

... Respondent/Complainant

2.Thinakaran

...Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in P.R.C.No.3 of 2018 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District and quash the same as against the petitioners.



For Petitioners : Mr.R.Anand
For R1 : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)

ORDER

This petition has been filed by the petitioners/A1 to A3 to quash the case in P.R.C.No.3 of 2018 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District.

2. The second respondent's ancestral cemetery comprised in S.No.2350 is situated at Leppai Kudiyiruppu, Radha Puram Taluk, Tirunelveli, to an extent of 14 cents. The second respondent used this land for burying his relatives' bodies and the second respondent has been conducting prayer in the said cemetery. That being the situation, on 18.01.2009, at about 04.30 p.m, the petitioners are said to have trespassed into the above land and abused the second respondent and caused damages to the cemetery and also criminally intimidated the second respondent when the second respondent obstructed the said illegal activities and hence, the second respondent made a complaint to the jurisdictional Police Station and the same was registered in Crime



No.86 of 2013 for the alleged offences under Sections 448, 427, 294(B) and 506(II) of IPC. Thereafter, investigation was conducted by the Inspector of Police, Panagudi Police Station, Tirunelveli District, and negative final report was filed before the learned Judicial Magistrate and the learned Judicial Magistrate without accepting the said report directed the Deputy Superintendent of Police, Valliyoor, Sub Division, to conduct further investigation and the same was challenged before this Court in CrI.OP(MD)No.16356 of 2019 by the petitioner. This Court has dismissed the same. Thereafter, the Deputy Superintendent of Police, Valliyoor, conducted further investigation and also filed positive final report before the learned Judicial Magistrate and the same was taken on file in P.R.C.No.3 of 2013 for the alleged offences under Sections 447, 297, 294(b), 506(ii) IPC & 3(1) of TNPPDL Act.

3. The petitioner filed this quash petition and raised two grounds.

i) Perusal of the entire materials filed along with the final report, do not point adequate materials to constitute the offences under Sections 447, 297, 294(b), 506(ii) IPC & 3(1) of TNPPDL Act.

ii) The Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, cannot be applied to the private properties and hence, offence



under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, is not made out and hence, he seeks quashment of the above said criminal proceedings.

4. The learned counsel for the petitioners submitted that the allegation stated in the FIR that the second respondent is in possession and enjoyment of the property as a legal owner on the date of the occurrence has not been established on the ground that they have purchased the property only on 25.02.2013. In the said situation, their case of alleged trespass and caused mischief to the cemetery of the second respondent's ancestors is not true one and hence, the allegations of criminal trespass and causing damages to the cemetery cannot fulfil the necessary ingredients as required under law. Apart from that, the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, was not applicable to the facts of the case.

5. This Court considered the learned Government Advocate (Crl.Side) who submitted that the Investigating Agency collected the adequate materials to constitute the offences under Sections 447, 297, 294(b), 506(ii) IPC & 3(1) of TNPPDL Act. Further, he also submitted



that the Hon'ble Division Bench of this Court in Crl.R(MD)No.869 of 2022 held that Tamil Nadu Property (Prevention of Damage and Loss)Act, 1992, is applicable to the private properties also. Hence, he seeks for dismissal of the quash petition.

6. This Court considered the rival submissions made by the both counsels and perused the records and precedents relied upon.

7. The applicability of the Tamil Nadu Property (Prevention of Damage and Loss)Act, 1992, is decided by the Hon'ble Division Bench positively in the following terms:-

“26. The statement of objects and reasons of the amending Act of 1994 also states that a decision has been taken to amend the Act suitably providing for punishments of persons who actually caused damage or loss to private property and to make the political parties or communal, language or ethnic group which organized such procession, assembly, meeting, agitation, demonstration or other activities liable to pay compensation for the damages. Therefore, it is very clear that the intendment of the legislature was to provide for punishment to persons who cause damage and also to make the organisers of processions,



assemblies, meetings, agitations, demonstrations or other activities, liable to pay damages. We are therefore constrained to conclude that the word used in the statement of objects and reasons would necessarily repel the interpretation that is sought to be placed by the Hon'ble Judges who concluded that the Act cannot be invoked in respect of damage caused to private property in a private dispute. ”

-Therefore the contention of the petitioner that the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, is not applicable to the present case deserves to be rejected.

8. The Investigation Officer namely, the Deputy Superintendent of Police, Valliyoor, Sub Division, as per the order of the learned Judicial Magistrate, Valliyoor, conducted further investigation and filed the positive final report. He examined number of witnesses. All the witnesses specifically stated that the accused trespassed into the defacto complainant's possession and caused damages to the cemetery. He also collected number of material documents. This Court perused the 161 Cr.P.C statements and other documents to verify the same and found that there is material available to frame the charges.



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9. This Court is satisfied that there are *prima facie* materials to proceed with the trial against the petitioners. In the case of **Rajeev Kourav V. Baishab and Others** reported in **2020 3 SCC 317** the Hon'ble Supreme Court has held as follows:-

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”



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10. In the said circumstances, applying the above principle, this Court has no material to entertain the quash petition filed by the petitioner.

11. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

12. However, considering the age of the petitioners 1 and 3 morethan 80 years, the personal appearance of the petitioners 1 and 3 before the trial Court is hereby, ordered to be dispensed with, on conditions that they shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on the hearings, specifically directed by the trial court. The petitioners 1 and 3 are further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates and that the Counsel representing them will cross examine the prosecution witnesses on the date of chief examination. The petitioners 1 and 3 shall not dispute the identity of the witnesses. The petitioners 1 and 3 shall appear before the Court in the event their presence is insisted



by the trial judge for the purpose of identification. If the petitioners 1 and 3 adopt any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioners 1 and 3 in accordance with the judgment of Supreme Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in *2001 (4) SCC 667*.

11.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate, Valliyoor,
Tirunelveli District.
- 2.The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

dss

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