



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.1501 of 2024

Velayutham

... Petitioner

Vs.

1.State Rep. by: The Inspector of Police,
Kottapatti Police Station,
Dharmapuri District.
(Crime No.4 of 2014)

2.Sivamurthy

3.Sivalingam

4.Ramasamy

... Respondents

[R2 to R4 sum moty impleaded as per order dated 05.02.2024 in CrI.O.P.No.1501 of 2024]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to allow the petition and set-aside the order dated 08.06.2022 passed in C.C.No.233 of 2014 on the file of the Judicial Magistrate Court, Harur, Dharmapuri District and thus render justice.

For Petitioner : Mr.J.Pradeep

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor for R1



ORDER

This criminal original petition has been filed challenging the order passed by the Court below dated 08.06.2022, passed in C.C.No.233 of 2014, whereby, the Court below decided to exercise its jurisdiction under Section 323 of Cr.P.C., and to commit the case to the Sessions Court on the ground that the evidence of PW1 makes out a case under Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act.

2. When the matter came up for hearing on 05.02.2024, this Court passed the following order:

It is seen from records that for the very same incident, there are three First Information Reports registered in this case. One First Information Report was registered based on the complaint given by the Village Administrative Officer in Crime No.4 of 2014. The second First Information Report was registered based on the complaint given by one Sivamurthy against the petitioner and others in Crime No.5 of 2014. The third First Information Report was registered based on the complaint given by the petitioner's wife against Sivamurthy and others in Crime No.6 of 2014. All the three First Information Reports were investigated and final reports were filed before learned Judicial Magistrate, Harur and the same was taken on file in C.C.Nos.233, 234 and 235 of 2014. Insofar as C.C.No.233 of 2014, which is the subject matter in the present petition is concerned, based on the evidence recorded from LW-1, the Court below has exercised its



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jurisdiction u/s.323 Cr.P.C. and has decided to commit the case to the Sessions Court since according to the trial Court, an offence u/s.5 of the TNPPDL Act has been made out. Insofar as C.C.No.234 of 2014 is concerned, it is posted for committal on 22.02.2024.

2. Learned Additional Public Prosecutor submitted that the offences for which cognizance has been taken by the trial Court does not warrant a committal and it can be tried by the Magistrate himself. Therefore, it is not known as to why the Court below has posted the said case for committal. The third case in C.C.No.235 of 2014 is posted on 22.02.2024 for examination of LW-1 to LW-3.

3. These cases are pending from the year 2014 and there is lot of confusion in dealing with these cases. Ultimately, all the three cases must be dealt with by the same Court since all the three cases arise out of the same incident. Therefore, there shall be a direction to the learned Judicial Magistrate, Harur, to submit a report before this Court as to why such a complicated procedure was undertaken by the Court below. Based on the report received from the learned Judicial Magistrate, final orders will be passed in this petition.

4. If ultimately, this Court directs all the three cases to be tried before the same Court, the accused persons in C.C.No.235 of 2014 must also be put on notice before orders are passed. Hence, Sivamurthy, Sivalingam and Ramasamy are suo motu added as respondents 2 to 4. Learned Additional Public Prosecutor shall instruct the respondent police to inform the impleaded respondents that the matter is posted for hearing on 19.02.2024. In the mean time,



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learned counsel for petitioner shall also take private notice to the impleaded respondents 2 to 4 returnable by 19.02.2024.

5. Registry is directed to carry out necessary amendment in all the concerned records.

Post this case under the same caption on 19.02.2024.

3.The matter was thereafter listed for hearing on 19.02.2024 and this Court passed the following order:

Pursuant to the earlier order passed by this Court on 05.02.2024, the matter was posted for hearing today. The learned counsel for the petitioner had taken private notice on behalf of the impleaded respondents 2 to 4. Insofar as the private notice that was sent to the impleaded 2nd respondent, the same has been returned with an endorsement “addressee absent”. Insofar as the private notice sent to 3rd respondent viz., Sivalingam, the cover has been returned with an endorsement “ deceased”. The private notice that was sent to the impleaded 4th respondent viz., Ramaswamy, has been served on 12.02.2024. The proof of service has also been filed in this regard.

2.The learned Additional Public Prosecutor on instructions submitted that the 1st respondent has also informed the impleaded respondents regarding the order passed on 05.02.2024.



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3. In the light of the above development, the 1st respondent shall ascertain as to whether the 3rd respondent viz., Sivalingam is alive or dead. if he had died, the proceedings will automatically abate. Insofar as the other two respondents, the 1st respondent shall also take steps to inform them to enable them to participate in the proceedings before this Court. The Registry is directed to print the name of R2 to R4 in the cause-list.

4. This Court had called for a report from the learned Judicial Magistrate, Harur and the same is yet to be received. The Registry is directed to follow up with the learned Judge and get the report before the next date of hearing.

5. Post this case under the same caption on 04.03.2024.

4. The learned Judicial Magistrate, Harur has submitted a report and for proper appreciation, the report is extracted hereunder:

In CC.No. 233/2014 evidence of PW1 was recorded. Based on the said evidence, since the offence of causing mischief to public property was made out, this court by order dated 18.03.2021 has converted CC.No.233/2014 into PRC.No. 3/2021 as per section 323 Cr.P.C.

The date and time of offence in CC.No. 233/2014 is 19.01.2014 at 12.30 PM and the complainant in the said case is VAO T.Andipudhur Village. The accused in said case are Chinnakannu,



Velayutham, Ramasamy, Murugan, Senthil, Perumal and Nathiya.

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The date and time of offence in CC.No. 234/2014 is 19.01.2014 at 12.30 PM and the complainant in the said case is Sivamoorthi. The accused in said case are Velayutham, Murugan, Chinnathambi, Senthil, Arumugam.

The common accused in both the cases are Velayutham, Murugan, Senthil all are sons of Chinnakannu. Since the date and time of both the cases are one and the same, but the complainant are different this court in the interest of justice is of the opinion that both the cases have to be tried simultaneously. Hence as per order dated. 31.03.2022 this court has posted this case for committal as per section 323 of CP.C.

The date and time of offence in CC.No. 235/2014 is 19.01.2014 at 12.45 PM and the complainant in the said case is Nathiya. The accused in said case are Sivamoorthy, Sivalingam and Ramasamy. The CC.No. 235/2014 is the case in counter for CC.No. 234/2014. Hence all the three cases have to be tried simultaneously.

5.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the 1st respondent.

6.This Court has carefully considered the submissions made on either side and also the materials available on record and also the report that was submitted by the



learned Judicial Magistrate, Harur.

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7. On carefully going through the evidence of PW1, this Court is of the view that the case can be brought within the four corners of the offence of mischief under the Indian Penal Code. It is not necessary to assume that an offence under Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act has been made out. Therefore, in the considered view of this Court, there is no need for committing the case and the same learned Judicial Magistrate, Harur can try all the three cases.

8. In the light of the above discussion, the order passed by the learned Judicial Magistrate, Harur dated 08.06.2022, is hereby set aside. Similarly, yet another order that was passed by the learned Judicial Magistrate in C.C.No. No.234 of 2014 to commit the case to the Sessions Court on the premise that the offence under Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act is made out, is also set aside. There shall be a direction to the learned Judicial Magistrate, Harur to



N.ANAND VENKATESH,J.

SSR

deal with all the three cases in C.C.Nos.233, 234 and 235 of 2014 in accordance with law and the proceedings shall be completed, within a period of three months from the date of receipt of copy of this order.

9.In the result, this criminal original petition stands allowed with the above directions.

04.03.2024

Index: Yes/No
Internet: Yes/No
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To

- 1.The Judicial Magistrate Court, Harur, Dharmapuri District.
- 2.The Inspector of Police,
Kottapatti Police Station,
Dharmapuri District.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

Crl.O.P.No.1501 of 2024