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Crl.A(MD)No.590 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	17/10/2024
Date of Pronounced	10/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

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1.Balasubramanian
2.Malai Megam
3.Anthony Raj
4.Sridher @ Sridharan : Appellants/A2 to A5

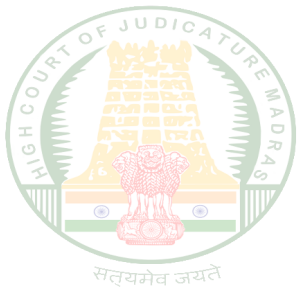
Vs.

The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
(Crime No.166 of 2013) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records in connection with judgment dated 25/11/2019 in SC No.195 of 2017 on the file of the 2nd Additional District and Sessions Judge, Thoothukudi and set aside the same as illegal and pass such other orders.

For Appellant : Mr.V.Rama Moorthy
for Mr.M.Seeni Sulthan

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



J U D G M E N T

This Criminal Appeal is filed against the judgement of conviction and sentence passed in SC No.195 of 2017, dated 25/11/2019 by the II Additional District and Sessions Judge, Thoothukudi.

2.The case of the prosecution in brief:-

On 09/06/2023, all the accused persons have set fire the documents and other things kept in the Store Room of the Panchayat Union Middle School, Kayalpattinam, caused damage to the tune of Rs.25,000/- and damaged the Government records. Upon the complaint given by the Headmaster of the School, a case in Crime No.166 of 2013 was registered by the respondent police for the offences under sections 147, 448, 436 IPC and section 3 of TNPPDL Act. After completing the investigation, final report was filed for the offence punishable under sections 147, 448 and section 4 of TNPPDL Act. It was taken cognizance in SC No.195 of 2017 by the II Additional District and Sessions Judge, Thoothukudi. After completing 207 Cr.P.C proceedings, the following charges were framed against the accused:-

(i)Due to rental dispute in the Panchayat Union Primary school situated in Kayalpattinam Theevu Thidal, on



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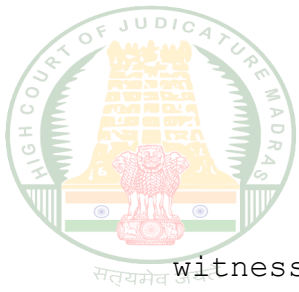
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09/06/2013 at about 04.30 pm, A1 to A5 made an unlawfull assembly, when PW2 went to the school to clean the water tank and thereby the accused persons committed the offence under section 147 IPC;

(ii) In course of the above said occurrence, at about 04.30 all the accused persons entered into store room of the school by breaking open the lock with an intention to set fire the records and thereby all the accused persons committed the offence punishable under section 448 IPC; and

(iii) In the course of the above said occurrence, all the accused persons caused damage to Marippu thattu-3, Globble-1, Teaching Aids I to V, ABC Cards-1 to V, Plastic mate-24, Flower books by setting fire, thereby caused damage to the tune of Rs. 50,000/- and so, all the accused persons committed the offence punishable under section 4 of TNPPDL Act.

3. To that charges, all the accused persons pleaded not guilty and claimed to be tried.

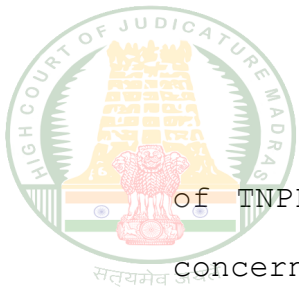


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4. During trial, on the side of the prosecution, 11 witnesses were examined and 11 documents marked. Apart from that, MO1 was marked. On the side of the accused, no oral and documentary evidence was adduced.

5. PW1 was working as Headmaster in the Panchayat Union Primary school situated in Kayalpattinam Theevu Thidal. On 09/06/2013 at about 04.30 pm, PW2 went to the school to clear the water tank. At about 04.30 when he entered into the school, he found one Farook and other accused persons burning the attendance register, admission register, teaching aid and other registers, etc. He immediately informed PW1 about the occurrence. On hearing the same, PW1 along with other teachers and staff went to the school and found the accused burning the articles, attendance register etc. When objected, the accused stated that the building belongs to them, but no rent was paid. The damaged articles are worth about Rs.25,000/-. He immediately lodged a complaint under Ex.P1 with the Arumuganeri Police Station.

6. That complaint was received by PW9 who was working as the Sub Inspector of Police, attached to Arumuganeri Police Station, on 09/06/2013 at about 8.00 pm in the night, registered a case in Crime No.166 of 2013 for the offences under sections 147, 448, 436 IPC and section 3

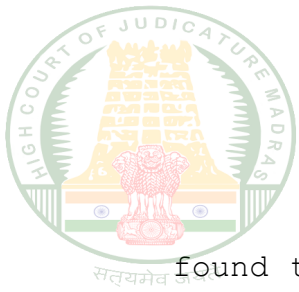


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of TNPPDL Act and submitted the recovered articles to the concerned court and copies to the concerned higher officials.

7.PW10 took up the investigation, who was working as Inspector of Police during the relevant time in the police station, on 09/06/2013 visited the place of occurrence at about 08.30 pm, in the presence of the witnesses prepared parvai mahazar and rough sketch and recovered the burnt articles under Ex.P10 attachi. Recorded the statement of the witnesses, arrested the accused on 10/06/2013 at about 07.00 am. They were remanded to judicial custody. Recorded the statement of the remaining witnesses.

8.In the meantime, he was transferred and so further investigation was undertaken by PW11 who is his successor, after enquired the witnesses who were enquired by his predecessor. They repeated the very same facts. So, no statements were recorded by him. Submitted the articles for valuation certificate. He received the certificate from the Assistant Education Officer, Thiruchendur, prepared the final report and filed the same to the court altering the offences to sections 147, 448 IPC and section 4 of TNPPDL Act.



9.PW3 and PW4 went along with PW1 to the school and found the accused indulged in burning register, damaged the articles etc.

10.PW5 who alleged to have present when the Investigating Officer visited the place of occurrence, prepared parvai mahazar and rough sketch. He turned hostile.

11.PW8 was working as Assistant Educational Officer. On the information furnished by PW1 went to the school on 10/06/2013 found the burnt articles. He issued valuation certificate under Ex.P6. With that, the prosecution side evidence was closed.

12.The accused were questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against them. They denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

13.At the conclusion of the trial, the trial court found the accused 2 to 5 guilty of the offence under sections **147, 448 IPC and section 4 of TNPPDL Act**. For the



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offence under section 147 IPC sentenced them to undergo 2 years Rigorous Imprisonment each and fine of Rs.2,000/- each in default to undergo 6 months simple imprisonment; for the offence under section 448 IPC sentenced to undergo 1 year Rigorous Imprisonment and fine of Rs.1,000/- each in default to undergo 3 months simple imprisonment and for the offence under section 4 of TNPPDL sentenced to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/- each, in default to undergo 1 year simple imprisonment. All the above sentences are ordered to run concurrently. Since A1 died pending trial, the charges against him were abated.

14. Against which, this criminal appeal is preferred by the appellants/A2 to A5.

15. Heard both sides.

The back ground facts:-

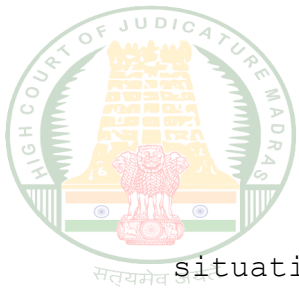
16. In the school premises, two schools were functioning, one a private school conducted by the deceased A1 namely Mohamed Farook. There was confusion with regard to the ownership of the premises. A complaint and counter complaint and action and counter action were taken by the Panchayat Union Officials regarding that. Later, Mohamed Farook vacated the premises. That is the evidence of PW8, who was working as Assistant Primary Educational Officer,



Thiruchendur. According to him, the premises belongs jointly to the first accused and one Nurul Amin. Mohamed Farook objected the Panchayat Union to run the school in the premises. He gave petitions to PW7 who was working as the Commissioner Panchayat Union, Thiruchendur.

17.Nurul Amin gave a petition stating that from 2005 onwards the Panchayat Union failed to pay the rent. Similarly, Mohamed Farook namely the first accused herein also gave a petition. So, PW7 sent notices to both sides to produce the documents of ownership. Only Nurul Amin appeared before him and produced the documents, but not the first accused.

18.In 2013 in the Union Council meeting, resolution was passed to pay the monthly rent from 2013. Nurul Amin was collecting rents. This fact was stated by PW7 is disputed by the first accused by way of cross examination stating that the school belongs to a Trust. Later, as mentioned by PW8, the first accused was evicted from the premises. What was the *inter se* issue between A1 and the Nurul Amin is beyond the scope of our discussion. We can conclude that there was an issue between the Panchayat Union officials and A1 regarding the functioning of the schools.



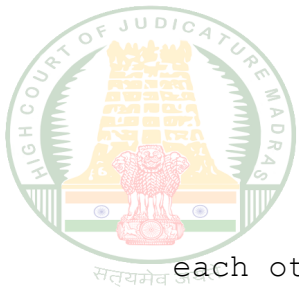
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19. But later, A1 vacated the premises. In this situation, the present occurrence said to have been taken place.

20. Now PW1 says that on 10/06/2013 at about 04.00 pm, her son namely PW2 informed her about the occurrence. PW2 says that on 09/06/2013 at about 04.30 pm, he went to the school for clearing the water tank. At that time, he found A1 and other accused damaging the attendance register, teaching aid near the stage. He immediately informed the same to PW1. PW1 immediately went to the school along with teachers. When she went to the school, the accused were found damaging the attendance registers and other articles. When she objected and questioned the accused, they stated that they are not paying the rent and vacate premises. PW1 and PW2 corroborated each other with regard to burning of the articles by the accused persons.

21. PW3 Mariammal stated that she was informed by PW1 about the occurrence. She also went to the school and saw the participation of the accused. On the information given by PW1, the police immediately came to the place and arrested the accused.

22. PW4 Dhanabai is the another teacher who was informed by PW1. He also corroborated PW3 about the occurrence and the involvement of the accused.



23.So, the evidence of PW1 to PW4 corroborating each other regarding the material particulars.

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24.The trial court believed the evidence of PW1 to PW4 about the occurrence. Now the finding of the trial court is challenged by the appellants. During the course of the argument it was submitted that the damaged articles were not collected by the Investigating Officer; The particulars of loss of records alleged to have been burnt were not furnished and the independent role alleged to have been played by the each of the accused were not specifically stated. The charge itself is not proper.

25.Now we will go to the charge. The charge clearly reads with regard to section 4 of the TNPPDL Act by mentioning that on 09/02/2013 at about 04.30 pm, in the course of the very same transaction, the accused 1 to 5 caused damage to the articles mentioned in the charge by fire.

26.Section 4 of the TNPPDL Act reads as follows:-

"4.Mischief causing damage to property by fire or explosive substance:-Whoever commits mischief by fire or any explosive substance



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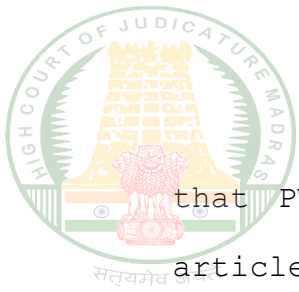


intending to cause or knowing it to be likely that he will thereby cause damage to any property to the amount of one hundred rupees or upwards, shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to ten years and with fine."

27.I find no error in the charge.

28.No doubt that along with the complaint under Ex.P1, PW1 has not enclosed the details of the registers, articles etc, burnt by the accused, the particulars of the articles burnt can be found out from the contents of Ex.P1 itself. Wherein PW1 has stated that 25 plastic mats, teaching materials for I to IV, 11 boxes containing the mathematical teaching aids, teaching cards, etc. pertaining to 41 cards, smart cares, book bouquets were burned. But when the Investigating Officer visited the place of occurrence, he was able to find out only remains of the burnt registers. He recovered the same under Athachi.

29.No doubt that burnt remains of the other articles were not recovered from that place. But that does not affect the case of the prosecution. Which articles were burnt may not assume any importance in view of the fact

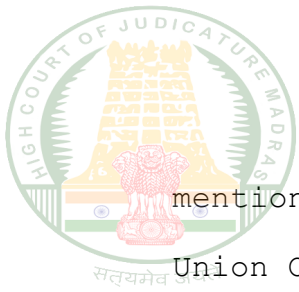


that PW1 to PW4 clearly stated about the burning of the articles and registers by the accused at that time. So, the contention on the part of the appellants is not well founded.

30. Another doubt raised by the accused is with regard to the seizure of MO1, observation mahazar and recovery mahazar under Exs.P8 and P10.

31. Ex.P8 is the observation mahazar, wherein we find reference to the burnt registers and articles in the place of the occurrence. In Ex.P10, it is mentioned by the Investigating Officer that the burnt remains of articles, registers were seized from the school premises. This is only a minor omission on the part of the Investigating Officer in correctly mentioning the actual place of recovery. But that does not affect the prosecution case. The contention that there was no clear evidence on the part of the prosecution to show that MO1 was burnt on the date of the occurrence, is not well founded in view of the clear evidence on the side of the prosecution in the form of PW1 and PW12.

32. I find absolutely no reason to doubt the evidence of PW1 and PW4. They have no personal grudge or motive against the accused for making false implication. As

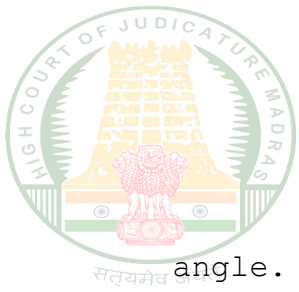


mentioned above, the issue was between A1 and the Panchayat Union Officials, in which PW1 to PW4 have no role to play.

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33. So the evidence of PW1 to PW4 is believable, corroborative and convincing. I find absolutely no material contradiction in their evidence. But there is one contradiction. PW1 says that immediately on seeing the occurrence, went to the police station and lodged the complaint. During the course of the cross examination also PW1 is very particular about the time and place of lodging Ex.P1.

34. PW3 has stated that PW1 immediately called the police from the place of occurrence, the police came to the spot, arrested the accused. PW4 also corroborated PW3 on this aspect. But PW1 has stated nothing about the phone call to the police, their visit and arresting the accused even before the complaint. Even if we take that, the police visited the place before the complaint, there is nothing wrong in it. When the burning of the public property that too belongs to the school, it is the duty of the police even before receiving or registering the formal complaint to visit the place of occurrence.



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35.We can take the visit of the police in that angle. This contradiction also does not enure to the benefit of the accused. So, the case of the prosecution that the accused namely the appellants herein along with the deceased A1 caused damage by firing to the articles mentioned in Ex.P1 stands established and the finding of the trial court on this aspect requires no interference at all.

36.Regarding the offence under sections 147 and 448 IPC in the grounds of appeal, it has been stated that there is a common entrance for both the schools. One is the school run by the Panchayat Union and the other by the deceased A1. So, the question of trespass may not arise. But, as mentioned above, the school run by A1 was shifted from the premises. The premises did not belong to A1. There is some evidence to the effect that the lock put up by A1 found broken and the broken lock was not recovered or seized by the Investigating Officer. Even in the complaint itself, PW1 has not stated about the breaking the lock. So, that need not be given any importance in view of the fact that on the date of the alleged occurrence, A1 was not the owner of the premises.

37.As mentioned above, when the issue was with regard to the vacation of A1 from the premises, all the



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accused assembled in the place of occurrence un-
authorisedly by making criminal trespass and caused damage

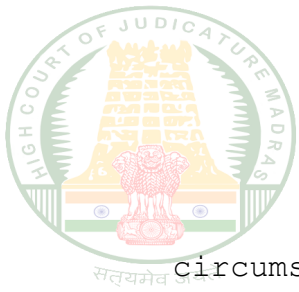
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to the school registers and articles by burning or fire.

So, the conclusion reached by the trial court in this
regard also requires no interference.

38.Regarding the sentence portion, it requires some
modification. The trial court convicted the accused persons
namely A2 and A5 for the offence under section 147 IPC and
sentenced them to undergo 2 years RI and imposed fine of
Rs.1,000/- each (Rs.4,000/-); for the offence under section
448 IPC, sentenced them to undergo 1 year RI and imposed a
fine of Rs.2,500/- each (Rs.10,000/-) and for the offence
under section 4 of TNPPDL Act sentenced them to undergo 10
years RI and imposed a fine of Rs.10,000/- each
(Rs.40,000/). In total, Rs.54,000/- was imposed towards
fine amount.

39.But however, considering the above factual
circumstance, I am of the considered view that it requires
modification. The conviction is confirmed. Regarding the
sentence minimum sentence prescribed is 2 years. But
however, discretion is available to the court to impose
lesser than the minimum sentence on valid grounds. Now
whether any valid is available namely whether any
mitigating circumstance are available to impose punishment
of lesser period is the point.

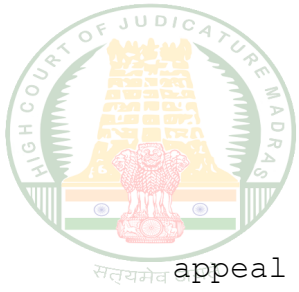


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40.The facts narrated above as well the circumstance under which the offences said to have been committed clearly indicate that some sort of issue existed between the de-facto complainant and the accused.

41.As mentioned above, at one point of time, the appellants claimed ownership over the building where the school was running. In the very same premises, the appellants were conducting the school. But later it was shifted. Because of that, there was continuous trouble between the de-facto complainant and the appellants herein. More-over, it is seen that the appellants are not the habitual offenders of any crime. It is seen that they are the first time offenders.

42.Considering the above said circumstances and no bad antecedents against the appellants is reported, I am of the considered view that the sentence may be reduced to the **period already undergone** for the offences under sections 147, 448 and section 4 of TNPPDL Act. The fine amount is sustained. The trial court has ordered payment of Rs. 54,000/- as compensation under section 357 Cr.P.C to the school authorities. This amount is modified to the effect that the compensation amount is fixed at **Rs.25,000/-** totally.



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43.With the above said modification, this criminal
appeal stands **partly allowed**.

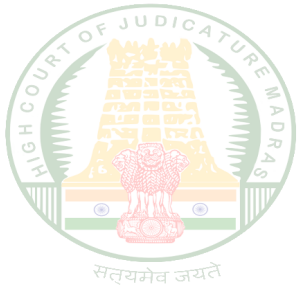
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To,

- 1.The II Additional District and Sessions Judge,
Thoothukudi
- 2.The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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