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Crl.RC.No.389 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2025

PRONOUNCED ON : 28.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.389 of 2023
and Crl.M.P.No.2991 of 2023

S.Vinayak

... Petitioner

Versus

The State Rep. by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 of the Code of Criminal Procedure, praying to call for the records pertaining to Crl.M.P.No.2186 of 2022 (old Cr.M.P.No.447 of 2018) dated 15.02.2023 in S.C.No.152 of 2018 pending on the file of Principal Sessions Judge, Nagapattinam and to set aside the said order dated 15.02.2023.

For Petitioner : Mr.K.Balu
For Mr.R.Ganesan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)



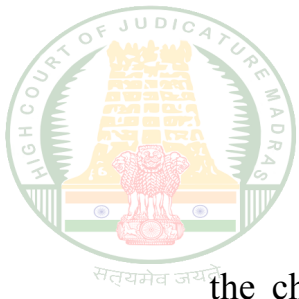
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ORDER

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This Criminal Revision Case has been preferred against the order dated 15.02.2023 passed by the learned Principal Sessions Judge, Nagapattinam, in Crl.M.P.No.2186 of 2022 in S.C.No.152 of 2018, thereby dismissing the petition to discharge the petitioner from all the charges.

2. The case of the prosecution was that on 26.03.2017 the petitioner had trespassed into the defacto complainant's school viz., National Elementary School situated at Pudareegakulam, Vadakarai, Nagapattinam District and caused damage to the Mahatma Gandhi statue situated within the school premises. On the complaint, the respondent registered the FIR in Crime No.145 of 2017 for the offences punishable under Sections 448, 504, 505(1)(b) of IPC and Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, (hereinafter referred to as “the TNPPDL Act”). After completion of investigation, the respondent filed final report and the same was taken cognizance by the trial Court in S.C.No.152 of 2018. While the case was pending for framing of charges, the petitioner filed petition to discharge him from all



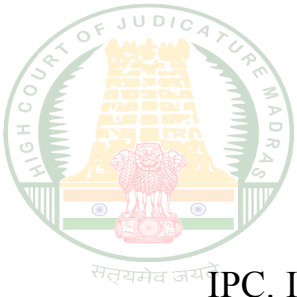
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the charges. It was dismissed by the trial Court and aggrieved by the same, the present revision.

3. The learned counsel appearing for the petitioner submitted that now the respondent filed final report as against the petitioner for the offences punishable under Sections 448, 504, 505(1)(b) of IPC and Section 3(1) of the TNPPDL Act. No charges have been made out as against the petitioner as per the material produced by the prosecution. The Section 3(1) of the TNPPDL Act is with regard to public property since it is a central Act. Admittedly, the subject property which is allegedly damaged by the petitioner is a private property and it does not belong to any government. Therefore, the charge under Section 3(1) of the TNPPDL Act is not attracted as against the petitioner.

3.1. He further submitted that in order to prosecute the petitioner for the charge under Section 505(1)(b) of IPC, the prosecution ought to have obtained sanction even before the filing of the final report. Admittedly, in the case on hand the respondent did not obtain any sanction to prosecute petitioner for the charges under Section 505(1)(b) of

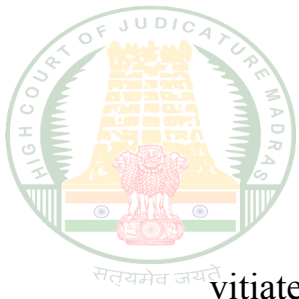


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IPC. In order to attract the charge under Section 448 of IPC, the property must be owned by the defacto complainant. But the subject property was owned by the petitioner herein and he obtained decree of injunction as against the defacto complainant long back and the same was also confirmed by the Hon'ble Supreme Court of India. Therefore, there is no question of trespass and the charge under Section 448 of IPC is not at all attracted as against the petitioner. The subject land belongs to the petitioner and as such he is free to remove all the obstructions in his land in a lawful manner. Therefore, the entire case of the prosecution has no legs to stand further and therefore, the petitioner is not liable to be punished for any charges.

3.2. He also submitted that for the very same occurrence the petitioner also lodged complaint as against the defacto complainant and the same has been registered in Crime No.156 of 2017 for the offences under Sections 147, 294(b), 448, 506(i) of IPC and Section 3(1) of the TNPPDL Act. Without even following procedure laid down under Section 588A of the Police Standing order, the respondent filed final report only as against the petitioner. Therefore, the entire proceeding is



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initiated as against the petitioner. In support of his contention, he relied upon the following judgments:

(i) W.P.No.2508 of 2016 dated 16.02.2017 in the case of Anil Kumar Rana Vs. District Magistrate Haridwar & ors – In the High Court of Uttarakhand at Mainital

(ii) Crl.O.P.No.4587 of 2024 etc., batch dated 08.08.2024 in the case of T. Balaji & anr Vs. The State – In the High Court Judicature at Madras.

4. Per contra, the learned Government Advocate appearing for the respondent submitted that the petitioner trespassed into the property owned by the defacto complainant and completely damaged the statue of the father of our nation, Mahatma Gandhi, situated within the school premises. Therefore, there are materials to attract the charges under Sections 147, 294(b), 448, 506(i) of IPC and Section 3(1) of the TNPPDL Act. Insofar as the sanction is concerned, at any stage the prosecution can obtain sanction to prosecute the petitioner. Further it is a curable defect and on that ground the petitioner cannot be discharged. Therefore, the entire allegations are not related to any civil dispute and it is purely a criminal dispute. Therefore, the respondent conducted detailed



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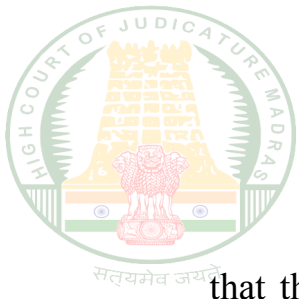
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investigation and filed final report and the same was rightly taken cognizance by the trial Court. Hence, the petition filed by the petitioner for discharge was rightly dismissed and it doesn't warrant any interference from this Court.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. The petitioner is the sole accused and he is facing charges for the offence under Sections 147, 294(b), 448, 506(i) of IPC and Section 3(1) of the TNPPDL Act. The trial Court, while exercising the jurisdiction to take cognizance on the final report filed by the prosecution, shall not act like a post master that receives the final report from the Police and blindly proceed to frame charges on the premise that the final report would be perfect in all respects. The trial Court ought to have seen whether the materials produced along with the final report attract any charges or not.

7. In the case on hand, on perusal of the records, it is revealed

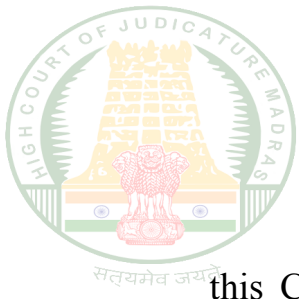


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that there has already been a civil dispute pending between the defacto complaint and the petitioner's father, which is a landlord and tenant dispute. The defacto complainant's school is a tenant in respect of the property comprised in survey No.435/2 part, situated at Pudareegakulam, Vadakarai, Nagapattinam District. In fact, the defacto complainant had deposited the rent in R.C.O.P.No.5 of 1991 till 2014 and thereafter, the defacto complainant's school stopped paying the rent. In the meantime, the land in which the school is situated was under the acquisition proceeding. Therefore, the petitioner's father challenged the said acquisition proceeding in W.P.No.31811 of 2014 and succeeded before this Court thereby the land acquisition proceedings were deemed to have been dropped under Section 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8. Even before that the petitioner's father filed suit in O.S.No.174 of 1986 for permanent injunction and the same was decreed by the decree and judgment dated 30.11.1988. It was confirmed by the first appellate Court in A.S.No.30 of 1989 dated 29.06.1989 and also by

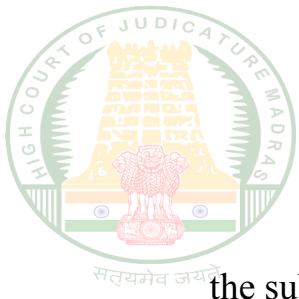


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this Court in S.A.No.2019 of 1989 by the judgment and decree dated 18.03.2002. Therefore, the defacto complainant has no right, title or possession over the subject property and they were prevented from interfering the peaceful possession and enjoyment of the subject property by the petitioner's family members.

9. In fact, due to violation of the said order, the petitioner's father filed execution petition in E.P.No.21 of 2014 under Order 21 Rule 32 and Section 151 of C.P.C. It was partly allowed by an order dated 30.09.2015 by attaching the immovable properties of the school management and withheld the detention of the school authorities in civil prison for disobedience of the civil Court order. Aggrieved by the same, the defacto complainant's school filed petition in C.R.P.No.4429 of 2015 and the same was also dismissed by this Court by an order dated 26.11.2015. It was also confirmed by the Hon'ble Supreme Court of India in S.L.P.No.8402 of 2016 by an order dated 18.04.2016. Even then, the defacto complainant's school kept on attempting to trespass into the property and as such the petitioner, in order to prevent the said trespass, proceeded to put a temporary make shift compound wall in and around



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the subject property.

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10. In fact, the petitioner was granted police protection in E.A.No.286 of 2016 in E.P.No.21 of 2014 in O.S.No.174 of 1986 by an order dated 14.03.2017. Under the protection of police, on 26.03.2017, the petitioner had put up a ready made wall at about 7.30 a.m., and completed the same at 8.30 a.m., on the same day. The defacto complainant and the school management had partly damaged the compound wall and also abused the petitioner with filthy language. Therefore, the petitioner lodged complaint as against the defacto complainant and the school management and the same was registered in Crime No.156 of 2017 for the offences punishable under Sections 147, 294(b), 448, 506(i) of IPC and Section 3(1) of the TNPPDL Act. However, the respondent did not even conduct any investigation. On the other hand, on the complaint lodged by the deacto complainant, the respondent registered the FIR in Crime No.145 of 2017 and filed final report without following procedure laid down under Section 588A of the Police Station Order.



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11. Insofar as the charge under Section 3(1) of the TNPPDL Act, the Act is a Central Act. It is relevant to rely upon the provision under Section 3(1) of the TNPPDL Act, as follows :-

*“3. Mischief causing damage to public property.—
(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine”*

The public property also defines under Section 2(b) of the TNPPDL Act as follows:-

“2. Definitions.

(a).....

(b) “public property” means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of—

(i) the Central Government; or

(ii) any State Government; or

(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or

(v) any company as defined in section 617 of the



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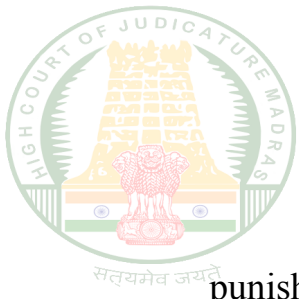
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Companies Act, 1956 (1 of 1956); or

(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf”

Admittedly, the subject property either belongs to the petitioner or the defacto complainant. Therefore, it is a private property and the offence under Section 3(1) of the TNPPDL Act is not at all attracted for any damage caused to the private property.

12. In order to prosecute the person for the charge under Section 505 (i)(b) of IPC, prior sanction even for investigating the accused is required as contemplated under Section 196 of Cr.P.C. Without prior sanction, the first respondent ought not to have filed final report. Therefore, no charge can be made without sanction. Further on perusal of the statement recorded under Section 161(3) of Cr.P.C., no one has spoken about the specific overt act as against the petitioner. All have stated that on instructions of the petitioner, other persons trespassed into the subject property and caused damage to the statue of Mahatma Gandhi. However, the case itself was registered only against the petitioner and not against anybody. The petitioner alone is charged for the offences



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punishable under Sections 448, 504, 505(1)(b) of IPC and Section 3(1) of the TNPPDL Act, even the defacto complainant and others categorically stated that so many persons, on the instructions given by the petitioner, trespassed into the property and caused damage to the statue of Mahatma Gandhi.

13. Insofar as the charge under Section 448 of IPC is concerned, the petitioner's father obtained decree in his favour in respect of the subject property for permanent injunction. The defacto complainant and her school are the tenants under the petitioner's father. In fact, the defacto complainant and her school is facing contempt proceedings for violation of the order passed by the civil Court. As stated supra, no one has spoken about the specific overt act of the petitioner as if he trespassed into the property and caused damage to the Mahatma Gandhi statue. In the absence of any material to attract any of the charges against the petitioner, the trial Court ought not to have dismissed the petition to discharge the petitioner and it cannot be sustained and is liable to be set aside.



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14. In view of the above discussions, the impugned order dated 15.02.2023 passed by the learned Principal Sessions Judge, Nagapattinam, in Crl.M.P.No.2186 of 2022 in S.C.No.152 of 2018, is hereby set aside. The petitioner is discharged from all the charges in S.C.No.152 of 2018 for the offences punishable under Sections 448, 504, 505(1)(b) of IPC and Section 3(1) of the TNPPDL Act. The trial Court is directed to close the case in S.C.No.152 of 2018 as against the petitioner.



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15. Accordingly, the Criminal Revision Case stands allowed.

Consequently, connected miscellaneous petition is closed.

28.08.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

1. The Principal Sessions Judge,
Nagapattinam.
2. The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

rts

ORDER IN
Crl.RC.No.389 of 2023
and Crl.M.P.No.2991 of 2023

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