

IN THE COURT OF SESSIONS JUDGE OF TIRUCHIRAPPALLI DIVISION,
TIRUCHIRAPPALLI.

PRESENT: Thiru S.Kumaraguru, B.L.,
Principal Sessions Judge.

Wednesday, the 21st day of March 2018

SESSIONS CASE No.125/15

(P.R.C.No.24/15 of Judicial Magistrate Court No.II,
Tiruchirapalli - Crime No.20/14 of K.K.Nagar Police Station)

Name of the complainant : State, rep. by Inspector
of Police, K.K.Nagar Police
Station, Tiruchirappalli.
(Cr.No.20/14)

Name and address of the : 1.Kirideon Jacob
accused Age 60/14
S/o Jacob
Service Road,
No.9 Renga Nagar,
Subramaniapuram
Trichy.

Charges framed : Charge framed against the
accused U/s.3(i) of Tamilnadu
Properties(Prevention of damage
and loss) Act.

Plea of the accused : Not guilty

Findings of the Judge : Accused is found not guilty
of offence Under Section 3(i) of
Tamilnadu Property (Prevention
of Damage and Loss) Act 1992.

Sentence or Order : Accused is acquitted under
Sec.235(1) of Criminal Procedure
Code. The bail bond executed by
the accused shall stand
cancelled. No property has been
seized and produced before this
court.

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Public Prosecutor : Thiru K.Sampathkumar
Counsel for the accused : Thiru R.Magendran

This sessions case coming on 01.02.2018 for final hearing before me, in the presence of Thiru K.Sampathkumar Public Prosecutor for the state and of Thiru R.Magendran advocate for the accused, upon perusing the records and upon hearing the arguments on both sides and having stood over till this day for consideration, this court delivered the following

JUDGMENT

The Inspector of Police, K.K.Nagar Police Station has laid the charge sheet against the accused that on 20.12.13 at about 12.00 noon, a public rain water channel leading on the service road of Tiruchy TVS Toll Gate to Ponmali road situate in front of Goodshepered Church, the accused without any prior permission or order, to extend the said church and for his personal welfare, damaged the said public property and caused loss of Rs.6,500/- and thereby the accused has committed the offence liable to be punishable U/s.3(i) of Public Properties (Prevention of Damage and Loss) Act,

2. On appearance of the accused before the committal court, copies of relevant documents were furnished to the accused U/s 207 Cr.P.C. On perusal of the case records, it reveals that the offence involved in this case is exclusively triable by the court of Sessions. Hence, the Judicial Magistrate No.II, Tiruchirapalli by order dated 06.07.2015 in P.R.C.No.24/2015 committed the case records to this court under section 209 Cr.P.C. for further proceedings in accordance with law. This court has taken the case on file in S.C.No.125/15.

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3. Upon consideration of the case records and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, this court having formed the opinion that there were sufficient grounds for presuming that the accused has committed offence and framed charge against the accused U/s.3(i) of TNPPDL Act 1992.

4. The accused pleaded not guilty of the aforesaid charge when the same was read over and explained to him.

5. As per the directions of the Hon'ble Madurai Bench of Madras High Court, Madurai in ROC. No. 413/2017/Crl. Sec. dated; 19.7.2017 the Principal Sessions Court is appropriate authority to try the cases relating to TNPPDL Act, this court tried this case.

6. To prove the case, the prosecution has examined witnesses P.W.1 to P.W.7 and marked Ex.P.1 to P.7. No property was produced.

7. The case of the prosecution as revealed from the evidence of the prosecution witnesses is as follows:

P.W.1 V.Baskaran was the Assistant Commissioner, Ariyamangalam Region, Tiruchirapalli Corporation. There was a Good Shepered church in Tiruchirapalli Ward No.33, on the service road leading to TVS Toll Gate to Ponmalai. On 20.12.13 the authorities of the said Church, damaged the rain water storage channel which belongs to the Tiruchirapalli Corporation for the purpose of construction a small bridge. P.W.1 came to know the same through the Assistant Engineer at about 10.30 AM to 11.00 Am on that day. Then P.W.1 immediately went to the place of occurrence and found that the above said channal got damaged in both sides. On enquiry, he came to know that the authorities of

the above said Church did not get any permission to do so from the Corporation. Since both side of the bridge got damaged, the rain water may lead to mingle with the drainage water. Then P.W.1 gave a complaint with the Inspector of Police, K.K.Nagar Police Station. The said complaint is marked as Ex.P.1.

P.W.2 Balachandran was residing at Kottapattu refugee camp and working as Crane Driver. One month prior to the date of occurrence, he saw some people are assembled in front of company where he is working. He went there. At that time the police got signature in the observation mahazar. His first signature in the observation mahazar is marked as Ex.P.2. He did not know for what purpose he put his signature therein. He was treated as hostile by the prosecution.

P.W.3 Gurunathar is working in Gani Steel Corporation as a labour. He did not know anything about the occurrence. He also denied the signature in observation mahazar as is not his signature. One month prior to the date of occurrence, he went the place of occurrence and at that time the police got his signature. He was also treated as hostile by the prosecution.

P.W.4 Kumar is residing at Ariyamangalam Kalaivanar Street. He does not know the accused. Four years prior to the date of occurrence, he went for work at the backyard of the said Church. At that time when he went for consuming tea, the police asked his address and he gave his address to them. He was also treated as hostile.

P.W.5 A.Senthilkumar is residing at Door No.7/1, Panneerselvam Street, Subramaniyapuram. He deposed that he does not know about the occurrence. On that date he went to market to

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purchase of vegetables. At that time the police asked him to give his address and so he gave his address to them. He was also treated as hostile.

P.W.6 K.Senthil is residing at No.54, Raja Street, Subramaniapuram. He knows the accused. He was in Good Shepperd Church. When P.W.6 returned from one tea shop, the police asked his address and so he gave his address to them. He does not know anything about the occurrence. He was also treated as hostile by the prosecution.

P.W.7 Ramadoss was the Sub-Inspector of Police at K.K.Nagar Police Station. On 06.01.2014 at 23.00 hrs when he was on duty, he received the cover which was forwarded through the Assistant Commissioner of Police, Tiruchirapalli, registered a case in Cr.No.20/14 U/s.3(1) of P.P.D Act. The First Information Report is marked as Ex.P.3. Then he went to the place of occurrence i.e. the flood water drainage in front of good shepherd church, prepared the observation mahazar and rough sketch in the presence of witnesses Balachandar and Gurunathan. The observation mahazar is Ex.P.4 and the Rough sketch is Ex.P.5. He examined the witnesses and recorded their statements. Then he sent a requisition for assessment of cost of damage to the Assistant Commissioner, Tiruchirapalli Corporation viz. Mr.Baskaran. Further he assessed the value for cost of damages is Rs.65,000/- and that assessment certificate is marked as Ex.P.6. The sketch attached with that letter is marked as Ex.P.7. Then the after completed his investigation, P.W.7 has filed charge sheet against the accused U/s.3(1) of PPD Act.

8. The accused was questioned under section 313 of the Code of Criminal Procedure about the incriminating circumstances

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appearing against the accused in the evidence of the prosecution witnesses. The accused denied the evidence of the witnesses as false and stated that a false case has been foisted against him. No witness was examined on the defence side.

9. Based on the respective contentions raised by the prosecution witnesses in their evidence the court has framed the following point for final determination:

1) *Whether the prosecution has established the charge through oral and documentary evidences against the accused under section 3(i) of TNPPDL Act beyond reasonable doubt?*

10. Point :

The learned Public Prosecutor has argued that the prosecution has examined 7 witnesses. Out of 7 witnesses, P.W.1 is a Government Employee and he gave the complaint that the accused and the members of his institution have damaged the channel which was running nearby channel. P.W.1's evidence is sufficient to prove the prosecution case. The learned Public Prosecutor would further contend that the colour xerox copy of the regarding the damage was marked as Ex.P.7 and the Ex.P.7 is also corroborated with the evidence of P.W.1. The learned Public Prosecutor further would submit that even though the P.W.2 to P.W.6 are turned hostile and not supported to the prosecution case, the property was damaged by the accused and his institution members is proved and hence on the basis of evidence of P.W.1 alone is enough to convict the accused according to law.

11. On the other hand the contention of the learned counsel for the accused is that there are several contradictions are between the witnesses and documents. Further he would contend that the evidence of P.W.1 is not sufficient to prove the

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prosecution case. P.W.1 deposed that he has received an information from the Assistant Engineer Raj Periyasamy. He was not examined by the prosecution side. The evidence of Assistant Engineer Raj Periyasamy who has given information to the P.W.1 is very necessary. Unfortunately the prosecution has not been examined the said Assistant Engineer Raj Periyasamy and even he has not also cited as witness in the list of witness by the prosecution which is also fatal to the prosecution case. Further the contention of the learned counsel for the accused is that Ex.P.1 complaint itself is not sustainable one. The name of the accused was not also mentioned specifically in the complaint. Therefore the above said Ex.P.1 is also not sufficient to prove the case of prosecution. Further the another one contention of the learned counsel for the accused is that the P.W.2, P.W.3 and P.W.4 who are the eye witnesses are also turned hostile in this case. Even the prosecution has not also elicited the case of prosecution through their cross examination. Therefore it is also fatal to the prosecution case. The further contention of the learned counsel for the accused is that the Ex.P.7 cannot be taken into account. Because the xerox photo copy was only produced by the prosecution to show the place of occurrence. But the original document was not produced by the prosecution. Therefore the specific occurrence place has not been identified by the prosecution through documentary evidence. It is also not sufficient to prove the prosecution case. Further the contention of the learned counsel for the accused is that the observation mahazar and rough sketch witnesses also not supported to Ex.P.4 and Ex.P.5. The observation mahazar witnesses P.W.2 and P.W.3 also not supported to the prosecution case and they did not speak about the place of occurrence. They deposed that on the requisition of police they put their signature only. Therefore Ex.P.4 is also not sufficient to prove the prosecution case.

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Further his another one contention is that the delay in lodging the complaint is fatal to the prosecution case. The further contention of the learned counsel for the accused is that the registering of First Information Report was also inordinate delay. The Ex.P.1 is also one day delay. The above said discrimination is fatal to the prosecution case. The further contention of the learned counsel for the accused is that though the damages was shown the occurrence place, further the reconstruction was also made. Under these circumstances, the accused is to be acquitted from the charge.

12. After taking into consideration of both side learned counsels arguments and on perusal of case records, this court has come to the conclusion that the contention of the learned counsel for the accused is sustainable one. In this regard, this court has gone through the case records. In this case, the prosecution has examined 7 witnesses. Out of 7 witnesses, P.W.1 was working as Assistant Commissioner, Ariyamangalam Region of Tiruchirapalli Corporation at the time of occurrence. He deposed in his evidence that on 20.12.2013 he was on duty and there was a Goodsheppered church on the service road from TVS Tollgate to Ponmalai and a channel also was there which is leading nearby the church. He only received an information through the Assistant Engineer viz. Raj Periyasamy on that day at about 10.30 Am to 11.00 Am. about the occurrence. Immediately he came to the place of occurrence and he found the channel was damaged. Subsequently he had given the complaint. This is the evidence of P.W.1. His evidence is not sufficient to prove the prosecution case. On enquiry made by him, he came to know that the members of the institution had damaged the channel. He did not mention the name of person by whom the channel was damaged in his evidence. Further cost of damage is also not mentioned in the Ex.P.1 by P.W.1. It is admitted that

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the channel was damaged when he went to the occurrence place. But P.W.1 has not stated when, where and by whom the channel was damaged. In the absence of the above said aspect, this court's opinion is that the evidence of P.W.1 is not sufficient to prove the prosecution case.

13. Further the evidence of P.W.2 to P.W.4 is also not supported to the prosecution case. P.W.2, P.W.3 and P.W.4 are all cited as eye witnesses. When they were entered into the witness box, they did not speak about the prosecution case. Therefore the evidence of P.W.2 to P.W.4 are not sufficient to prove the prosecution case. Further P.W.2 and P.W.3 are cited observation mahazar witnesses and when they entered into the witnesses box, they did not depose in their evidence about that in their presence the observation mahazar was prepared by Investigating Officer. But the Investigating Officer in his evidence deposed that in their presence the observation mahazar was prepared and therefore the observation mahazar is also not taken into consideration since the attested witnesses did not depose about the contents of documents and hence the Ex.P.2 cannot be taken into account. Further the P.W.7 Sub-Inspector of Police who registered the case has also taken up the case for his investigation which is against in law. The Sub-Inspector of Police is not a competent person to investigate the case comes under the Public Property(Prevention of Damage and Loss) Act. Therefore the evidence of P.W.7 is also not taken into account and the investigation in this case also is doubtful one and therefore the evidence of P.W.7 also is not sufficient to prove the prosecution case.

14. Further in respect of documentary evidence, the Ex.P.1 is the complaint. The content of Ex.P.1 reveals that P.W.1 Assistant Commissioner of Ariyamangalam Region of Tiruchirapalli Corporation


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was given information by the Assistant Engineer Raj Periyasamy. On that basis P.W.1 gave the complaint on 20.12.2013. On perusal of complaint Ex.P.1 it is found that the institution members of Goodsheppered Church, damaged the channel. The complaint was forwarded to the Inspector of Police, K.K.Nagar Police Station, Tiruchy on 21.12.13 whereas the occurrence was happened on 20.12.13. There is one day delay in lodging the complaint by P.W.1. Further after receipt of the complaint, it was registered on 27.12.13 i.e. 8 days delay in registering the complaint. In this regard, this court has gone through the evidence of P.W.7. He did not speak about the delay in registering the complaint. Based on the complaint, the First Information Report was registered by the Investigating Officer on 06.01.14. It is inordinate delay in registering the First Information Report also. In this regard, the Investigating Officer has not properly explained as to why the First information Report was registered on 06.01.14 in inordinate delay for the offence which was happened on 20.12.13. This is fatal to the prosecution case. Further the said First Information Report was also reached to the Judicial Magistrate Court on 07.01.2014 i.e. 1 day delay. Therefore the delay in lodging the complaint, registering the complaint and forwarded the same to the Court have not explained by the Investigating Officer. It is the bounden duty of the Investigating Officer to explain as to why the delay was happened to register the FIR and sent the same to the Court. Further on perusal of the First Information Report, it is found that the Col.13 to 15 have not been filled up properly by the Investigating Officer. In particular in Col.14, the signature of complainant was not obtained by the Investigating Officer. It is settled principle that one copy of the FIR has to be given to the complainant immediately after registering the case. It is mandatory provision. Hence the mandatory provision was not also

complied with the Investigating Officer. Under these circumstances, this court's opinion is that Ex.P.1 and Ex.P.3 are created doubts about the prosecution case.

15. Further on perusal of Ex.P.6, it is found that the Assistant Commissioner, Ariyamangalam Region, Tiruchirapalli Corporation has assessed the value of damages after visited the place of occurrence. Ex.P.6 does not disclose that when the Assistant Commissioner went to the place of occurrence and on what basis he assessed the value of damages of property worth Rs.65,000/-. In the absence of the above said aspect, this court's opinion is that the Ex.P.6 is not supported to the prosecution case. Further Ex.P.6 reveals that after giving notice of the Commissioner to the Church members, the damaged channel was reconstructed as it was before at their own cost. But P.W.1 did not speak about when he went to the place of occurrence and on what basis he assessed the value of damage at the cost of Rs.65,000/- caused to the public properties and also after issuing of notice by the P.W.1 to the accused institution, he has rectified the damages. The above aspects are considered by the court and come to the conclusion that the Ex.P.6 is also not sufficient to prove the prosecution case.

16. Further on perusal of case records, it is found that the Ex.P.7 is the colour xerox photograph copy of the occurrence place and the same was given to P.W.7 the Investigating Officer. It is the bounden duty of the Investigating Officer to obtain the original sketch record from the corporation authority at the time of examination of witnesses. When the original document was not produced by the Corporation, Tiruchirapalli and produced the same by the prosecution, it is fatal to the prosecution case. Further the Investigating Officer has not cited the witness Raj Periyasamy



who has given information to the P.W.1 about the occurrence. This court opines that the said Assistant Engineer Raj Periyasamy is the competent person to depose about the damages which was committed by the accused. In the absence of the above said aspect and the investigating agency has not chosen to examine the said Assistant Engineer is also fatal to the prosecution case. Further on perusal of the case records, it is found that the material witnesses are turned hostile.

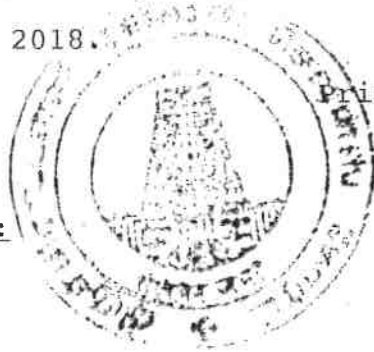
17. Further this court has gone through the evidence of P.W.7 it is found that there are many omissions and commissions committed by the Investigating Officer in this case. The first omission was committed by the Investigating officer that he has not chosen to examine the Assistant Engineer who has informed the occurrence to P.W.1 Raj Periyasamy was not cited as witness. The another omission committed by the Investigating Officer is that he had not obtained signature in Col.14 of First Information Report which is also fatal to the prosecution case. The third omission committed by the Investigating officer is that he has not explained as to why the delay in registering the First Information Report and sent to the Judicial Magistrate Court even the said Judicial Magistrate Court is situate nearer to the place of occurrence. There is no proper explanation was given by the Investigating Officer either oral or documentary proof. The fourth omission committed by the Investigating Officer is that the original corporation record was not obtained by the prosecution. The fifth omission committed by the Investigating Officer is that the cost of damage was not properly assessed by the concerned competent person and the Investigating officer did not take any steps to obtain the proper assessment for the damages caused by the accused and hence it is also the fatal to the prosecution case. Further the Investigating officer has not explained as to

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why he investigated the case when the Inspector of Police was available. This is also fatal to the prosecution case. Further on perusal of case records, it is found that the Investigating Officer has also committed another one mistake is that he had not taken any photo to ascertain the exact place of occurrence. This is also fatal to the prosecution case. Further the Investigating Officer has not chosen to examine any witnesses in and around the place of occurrence as witnesses. All the above aspects are considered by this court and come to the conclusion that the prosecution has not proved its case beyond reasonable doubt through oral and documentary evidences and the accused is entitled to benefit of doubt and by giving benefit of doubt, the accused is entitled to acquittal from the charge.

In the result, the accused is found not guilty of offence Under Section 3(i) of Tamilnadu Property (Prevention of Damage and Loss) Act 1992 and the accused is acquitted under Sec.235(1) of Criminal Procedure Code. The bail bond executed by the accused shall stand cancelled. No property has been seized and produced before this court.

Dictated to the Stenographer, typed by him and after carrying out corrections, pronounced by me in the open court on this the 21st day of March 2018.



Principal Sessions Judge
Tiruchirapalli.
21.03.2018.

List of Witnesses:

For Prosecution:

P.W.1 : V. Baskaran

P.W.2 : Balachandran @ Kannan

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P.W.3 : Gurunathan

P.W.4 : M.Kumar

P.W.5 : A.Senthilkumar

P.W.6 : K.Senthil

P.W.7 : A.Ramadoss

For defence : NIL

List of documents for prosecution :

Ex.P.1 : 21.12.13 : Complainant

Ex.P.2 : 06.01.14 : Signature of P.W.2 in observation mahazar

Ex.P.3 : 06.01.14 : First Information Report

Ex.P.4 : 06.01.14 : Observation mahazar

Ex.P.5 : 06.01.14 : Rough sketch

Ex.P.6 : 09.05.14 : Assessment letter

Ex.P.7 : --- : Colour photo copy of xerox regarding the
place of occurrence

List of documents for defense : NIL

Material Objects: NIL



Principal Sessions Judge
Tiruchirapalli.

21.03.2018.

EXAMINED

LAST PAGE:- TRUE COPY

SUPERINTENDENT



R. Nagendran.

Adv.

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Sc 125 / 15

District Court, Tiruchirappalli

| | |
|--------------------------|----------------|
| Application Made | <u>28.8.18</u> |
| Stamp Papers Called for | <u>27.4.18</u> |
| Stamp Papers deposited | <u>28.4.18</u> |
| Add. Expenses called for | _____ |
| Add. Stamps deposited | _____ |
| Copy Ready | <u>2.5.18</u> |
| Copy submitted | _____ |

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