
(2009) 07 MAD CK 0440

In the Madras High Court

Case No : Criminal R.C. (MD) No. 774 of 2006 and M.P. No. 1 of 2006

Giri and Others

APPELLANT

Vs

State
State Vs Giri and Others

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228(1)

General Clauses Act, 1897 — Section 26

Penal Code, 1860 (IPC) — Section 425, 426

Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3(1)

Citation : (2009) 07 MAD CK 0440

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : T.K. Gopalan, for the Appellant; S. Muthu Venkatesan, Government Advocate (Criminal Side), for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—Challenge in this criminal revision case is to the order passed in Cr.M.P. No. 373 of 2006 in Sessions Case No. 9 of 2005 by the Additional District and Sessions cum Fast Track Court No. III, Madurai.

2. The revision petitioners herein as petitioners have filed the petition in question under Sections 228(1)(b) of the Code of Criminal Procedure, praying to transfer Sessions Case No. 9 of 2005 on the ground that there is no offence exclusively triable by the Court of Sessions.

3. It is stated in the petition that the petitioners have been arrayed as accused in Sessions Case No. 9 of 2005, pending on the file of the Additional District and Sessions cum Fast Track Court No. III, Madurai. The High Court of Judicature at Madras, Madurai Bench has observed that the objects and reasons of the provisions of offence u/s 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 will not get attracted. Under the said circumstances, no

offence is made out under the said Section against the petitioners/accused and therefore, the present petition has been filed so as to transfer Sessions Case No. 9 of 2005 mainly on the ground that there is no offence exclusively triable by the Court of Sessions.

4. The Court below, after considering the divergent submissions made on either side, has dismissed the petition. Against the dismissal order, the present criminal revision case has been filed at the instance of the petitioners/accused as criminal revision petitioners.

5. The learned Counsel appearing for the revision petitioners/petitioners/accused has valiantly contended that in Sessions Case No. 9 of 2005 the revision petitioners/petitioners/accused have been arrayed as accused and they are facing a charge u/s 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 and the alleged occurrence has not taken place under the circumstances mentioned in the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 and further this Court has observed that the provision of Section 3(1) of the said Act will not get attracted in the instant case and under the said circumstances, the present petition has been filed for the relief sought for therein, but the Court below has erroneously dismissed the same and therefore, the dismissal order passed by the Court below is liable to be interfered with.

6. In order to repel the argument advanced by the learned Counsel appearing for the revision petitioners/petitioners/accused, the learned Government Advocate (criminal side) has also equally contended that the provision of Section 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 can be invoked even in the circumstance existing in the present case and the Court below, after considering all the contentions raised on either side, has rightly dismissed the petition and therefore, the dismissal order passed by the Court below is perfectly correct and the same needs no interference.

7. Basing upon the divergent submissions made by either Counsel, the Court has to look into as to whether the revision petitioners/petitioners/accused can be prosecuted u/s 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992.

8. It is an admitted fact that the alleged occurrence has not taken place under the circumstances mentioned in the objects and reasons of the Act.

9. The learned Counsel appearing for the revision petitioners/petitioners/accused has mainly relied upon the objects and reasons given in the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 as well as Amendment Act 46 of 1994. In the Amendment Act 46 of 1994, it is stated as follows;

The Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 (Tamil Nadu Act 59 of 1992) was enacted to prevent widespread damages to public property by enacting a comprehensive legislation providing for punishments of the persons who actually cause damage or loss to the public property and to

make the political parties or communal, language or ethnic, agitation, demonstration or other activities liable to pay compensation in respect of damage or loss caused to any public property during such processing, assembly, meeting, agitation, demonstration or other activities. Widespread damages to provide property are also being caused during procession, meeting, agitation, demonstration or other activities organised by political parties or communal, language or ethnic groups. The provisions of the said Act do not provide for the payment of compensation and for the punishment in respect of the damage or loss caused to private property. It has, therefore, been decided to amend the said Act suitably providing for punishments of the persons who actually cause damage or loss to the private property and to make the political parties or to communal, language or ethnic group which organised such processing, assembly, meeting, agitation, demonstration, or other activities liable to pay compensation in respect of damage or loss caused to any private property also.

10. From the close reading of the objects and reasons mentioned in the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992, it is easily discernible that the said Act has been enacted only under the circumstances mentioned therein and further it is learnt that as per Amendment Act 46 of 1994, the provision of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 are also applicable to private property.

11. At this juncture, it would be more useful to look into Section 2(4) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 and the same reads as follows;

2. Definitions: In this Act, unless the context otherwise requires-

[1]. [2]. [3].

[4] "Property" means any property movable or immovable or machinery owned by in possession of, or under the control of any person including.

[a] the Central Government; or

[b] the State Government; or

[c] any local authority; or

[d] the Tamil Nadu State Electricity Board; or

[e] any University in this State; or

[f] any co-operative society including a land development bank registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act, 1983 [Tamil Nadu Act 30 of 1983]; or

[g] any corporate body constituted under any Act passed by Parliament or the Legislative Assembly of this State; or

[h] any other corporation owned or controlled by the Central Government or the

State Government; or

[i] any institution, concern or undertaking or;

[j] any company.

12. The original word "public" found in the said Sub-section has been amended as per Amendment Act, 46 of 1994 with effect from 04.08.1994. Therefore, it is quite clear that parent Act viz., the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 applies both to public and private property.

13. The sum and substance of the issue involved in the present criminal revision case is as to whether Section 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 can be invoked in the circumstance available in the present case. As stated earlier, the specific case of the prosecution is that the revision petitioners/petitioners/accused have committed the said offence other than in the circumstances mentioned in the objects and reasons of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992.

14. The learned Counsel appearing for the revision petitioners/petitioners/accused has repeatedly contended that the offence alleged to have been committed by the revision petitioners/petitioners/accused would come within the meaning of Section 425 of the Indian Penal Code and if at all the alleged offence is proved, they would be punished only u/s 426 of the said Code.

15. It has already been pointed out that the entire argument advanced by the learned Counsel appearing for the revision petitioners/petitioners/accused is based upon the objects and reasons mentioned in the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Of-course it is true that in the said Act, it is clearly mentioned the circumstances such as procession, assembly meeting, agitation, demonstration or other activities.

16. At this juncture, it would be more useful to look into the following decisions accited by the learned Counsel appearing for the revision petitioners/petitioners/accused:

a) The first and foremost decision is reported in Narain Khamman Vs. Parduman Kumar Jain, wherein the Honourable Apex Court has held that as follows;

It is now well settled that though the Statement of Objects and Reasons accompanying a legislative Bill cannot be used to determine the true meaning and effect of the substantive provisions of a statute, it is permissible to refer to the Statement of Objects and Reasons accompanying a Bill for the purpose of understanding the background the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy.

b) The second decision is reported in Devadoss (Dead) by Lrs. and Another Vs. Veera Makali Amman Koil Athalur, wherein also the Honourable Apex Court has held that the statement of objects and reasons can be used for understanding

the background, the antecedent state of affairs and the evil sought to be remedied by the statute.

c) The third decision is reported in *The State of Gujarat Vs. Chaturbhuj Maganlal*, wherein the Honourable Apex Court has held that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provision, comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result.

17. From the conjoint reading of the decisions referred to supra, the following aspects have become emerged.

a) The statement of objects and reasons accompanying a legislative Bill cannot be used to determine the true meaning and effect of the substantive provisions of a statute.

b) The statement of objects and reasons can be used only for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute.

c) If the language of the statutory provision is susceptible of two interpretations, the best one can be taken into account.

18. As elucidated earlier, the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 has been enacted only for the purpose of avoiding damages to public property at the time of procession, assembly meeting, agitation, demonstration or other activities and the said Act has also been extended to private property. As per the decisions referred to in *Narain Khamman Vs. Parduman Kumar Jain*, and also as per the decision reported in *Devadoss (Dead) by Lrs. and Another Vs. Veera Makali Amman Koil Athalur*, , this Court is of the view that the objects and reasons for enacting the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 would not affect the substantive provisions of the said Act. To put it in a nut-shell, for enacting the said Act, only reasons have been mentioned in its preamble and the same would not affect the applicability of the said Act even to the circumstances other than the circumstances mentioned therein. Further, the statements of "Objects and Reasons" of a statute cannot be construed as provisions of law. Therefore, it is quite clear that the argument advanced by the learned Counsel appearing for the revision petitioners/petitioners/accused is not legally correct.

19. For the sake of completion, this Court would like to look into Section 26 of the General Clauses Act, 1897 and the same reads as follows;

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the

same offence.

20. In the instant case, it has already been pointed out that Section 426 of the Indian Penal Code is available for giving punishment for the alleged offence of mischief. Likewise similar provision is available in Section 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Therefore, in view of Section 26 of the General Clauses Act, 1897, it is needless to say that the revision petitioners/petitioners/accused can very well be prosecuted u/s 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 and on that score also, the present petition is not legally maintainable.

21. The Court below, after considering all the contentions raised on either side, has rightly dismissed the petition. In view of the foregoing enunciation of both the factual and legal aspects, this Court has not found any illegality nor infirmity in the order passed by the Court below and altogether the present criminal revision case deserves dismissal.

22. In fine, this criminal revision case deserves dismissal and accordingly is dismissed. The order passed in Cr.M.P. No. 373 of 2006 in S.C. No. 9 of 2005 by the Additional District and Sessions cum Fast Track Court No. III, Madurai is confirmed. Consequently, connected miscellaneous petition is also dismissed.