

Crl.R.C.(MD)No.1181 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 15.10.2025

Pronounced on : 16.12.2025

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.1181 of 2025

Arul Gerald Prakash

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by the Inspector of Police,
Naesomony Nagar Police Station,
Nagercoil,
Kanyakumari District.

2.Michel George Bright

3.Leo Robin

4.Jash Davis

5.Helen Vasantha Davis

6.Stephen

... Respondents

Prayer : Criminal Revision Case is filed under Section 438 r/w 442 of BNSS, to set aside the impugned order dated May 19, 2025 passed by the learned Judicial Magistrate - II Court, Nagercoil, in Cr.M.P.No.984 of 2025, in the interest of justice, remand the matter to the learned Judicial Magistrate-II Court, Nagercoil, for fresh consideration after permitting the petitioner to file the requisite affidavit in support of the petition under Section 175(3) of BNSS; or direct the 1st respondent to



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register an FIR and conduct a proper investigation into the alleged offences of trespass, destruction of property and desecration of graves under relevant sections of BNS and TNPPDL Act.

For Petitioner : Mr.S.Ananth

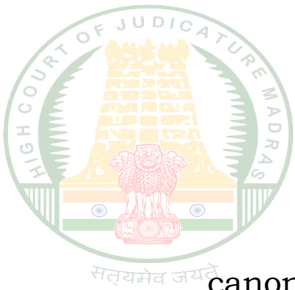
For R-1 : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)

For R-2 to R-6 : Mr.Xavier Rajini

ORDER

Preface:

This Criminal Revision Case arises out of a dispute touching upon not merely property rights, but the deeply sensitive issue of the dignity of the dead and the sanctity of a Christian cemetery maintained by a parish church for over a century. The narrow legal question before this Court is whether the learned Judicial Magistrate-II, Nagercoil, was justified in dismissing a petition filed under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, merely on the ground that it was not accompanied by a supporting affidavit, without affording an opportunity to cure the defect. The broader backdrop, however, involves allegations of unilateral demolition of graves in a church cemetery and the consequent claim that such an act constitutes a serious violation of constitutional, statutory,



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canonical and international human rights norms.

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Factual Background:

2. The petitioner is a member of Lurthannai Church at Punnai Nagar, Nagercoil. According to him, the Church maintains a separate graveyard exclusively for its members and their families. Christian families, it is stated, do not ordinarily have private family graveyards, instead, members are buried in the common cemetery of the parish church. The cemetery in question is said to be more than 100 years old, where successive generations of the congregation have been buried.

3. It is the petitioner's case that for each burial, the family of the deceased pays a sum of about Rs.20,000/- (Rupees Twenty Thousand only) as a fee or hire for the grave space, and that the graveyard has thus been used and maintained as a sacred burial site for generations of the parishioners.

4. The petitioner alleges that on 07.01.2025, between 04.00 p.m. and 08.00 p.m., and again on 08.01.2025, between 09.00 a.m. and 01.00 p.m., respondents 2 to 6, who are office-bearers of the

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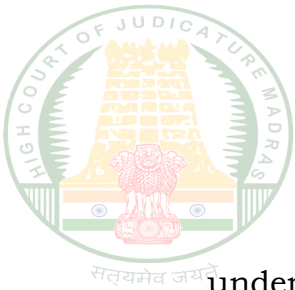
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Church (President, Vice-President, Treasurer, Secretary and other administrative members), entered the cemetery with the aid of three JCB vehicles and demolished the existing graves and tombs without any permission from or consultation with the families who had buried their relatives in the said cemetery. The complaint is that the grave structures were “scrambled” and “completely demolished” without any consent from the members.

5. Aggrieved by the demolition, the petitioner lodged a complaint before the first respondent police on 09.01.2025, which was assigned CSR No.16 of 2025. As no effective action was taken, he submitted a representation to the Superintendent of Police, Kanyakumari District, on 10.03.2025. According to the petitioner, even thereafter, no FIR was registered and no meaningful investigation was conducted.

6. Meanwhile, it appears that the first respondent police closed the complaint as “action dropped”. The Revenue Divisional Officer, Nagercoil, is said to have thereafter passed a *status quo* order in the context of disputes between the factions in the parish over the demolition of tombs and the use of the cemetery.

7. Thereafter, the petitioner along with others filed a petition



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under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, before the learned Judicial Magistrate-II, Nagercoil, seeking a direction for registration of FIR and investigation. By order dated 19.05.2025 in Crl.M.P.No.984 of 2025, the learned Magistrate dismissed the petition on the sole ground that no supporting affidavit had been filed along with the petition.

8. Questioning the said order, the present Criminal Revision Case has been filed, praying for setting aside the impugned order, remand of the matter with liberty to cure the defect of non-filing of an affidavit and, in the alternative, for a direction to register FIR and investigate the alleged offences of desecration of graves and destruction of cemetery structures under Section 301 of the Bharatiya Nyaya Sanhita, 2023, and the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

Submissions:

9. The learned counsel for the petitioner submitted that the graveyard at Punnai Nagar is the cemetery of Lurthannai Church and is maintained exclusively for the burial of members of the congregation and their families. The cemetery is more than a hundred years old and has always been treated as a sacred site. The

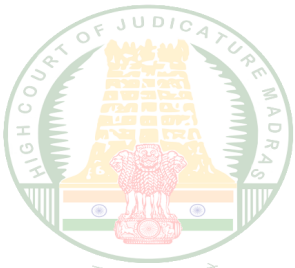


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parishioners pay about Rs.20,000/- per burial by way of fee for allotment or use of space for the grave, thereby reinforcing the communal character of the cemetery as belonging beneficially to the members and not as a mere piece of disposable property in the hands of administrators.

10. It was submitted that on 07.01.2025 and 08.01.2025, respondents 2 to 6, who are office-bearers of the Church, brought three JCB machines and demolished the existing graves and tombs without obtaining the consent of the families concerned or the general body of members. Such action, it was argued, amounts not only to grave desecration but also to criminal trespass and mischief, attracting an offence under Section 301 of the Bharatiya Nyaya Sanhita, 2023, which penalises trespass in a place of sepulture and any indignity to human corpses, besides offences under the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

11. The learned counsel pointed out that though the petitioner lodged a complaint on 09.01.2025 (CSR No.16 of 2025) and later addressed a representation to the Superintendent of Police on 10.03.2025, no FIR was registered. Instead, the complaint was closed as “action dropped” by the police, leaving the parishioners without any



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criminal law remedy.

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12. In these circumstances, the petitioner invoked Section 175(3) BNSS, 2023, before the learned Magistrate. The Magistrate, however, dismissed the petition solely on the ground that it was not accompanied by a supporting affidavit, without granting any opportunity to cure the defect. According to the learned counsel, non-filing of an affidavit is only a curable defect and cannot result in outright rejection of a petition seeking registration of FIR where serious cognizable offences are alleged.

13. In support of this proposition, reliance was placed on the judgment of the **Hon'ble Supreme Court in *S.N. Vijayalakshmi & Others v. State of Karnataka & Another*¹, Criminal Appeal No. of 2025** arising out of ***S.L.P. (Crl.) No.8626 of 2024***, dated 31.07.2025, wherein the Hon'ble Supreme Court has held, *inter alia*, that non-filing of a supporting affidavit is a curable defect and the learned Magistrate must afford an opportunity to cure such defect before passing a substantive order on the complaint or application.

14. The learned counsel submitted that the matter also involves

¹ 2025 INSC 917



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the fundamental right to dignity extending beyond death under Article 21 of the Constitution of India, as recognised in ***Pt. Parmanand Katara v. Union of India***² and ***Ashray Adhikar Abhiyan v. Union of India***³. It was emphasised that the demolition of graves without consent of the families violates the dignity of the dead and the sentiments of the living who have a continuing right to visit and revere the graves of their deceased relatives.

15. The learned counsel contended that church cemeteries are to be treated as sacred trusts. According to him, even the church authorities, including the Bishop and Parish Priest, do not possess an unfettered right to demolish graves or disturb established cemeteries without following due process, obtaining consent and complying with both secular law and canon law. He also referred to the practice during the COVID period, when exhumation and reburial of bodies required permission from the competent Government authorities, underlining that even the movement of mortal remains is regulated and cannot be done unilaterally.

16. On the factual aspect of the decisions and resolutions, the

2 *AIR 1989 SC 2039*

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learned counsel for the petitioner pointed out that the respondents rely upon a resolution dated 05.01.2025 , which, according to the petitioner, was not signed by the general body members and initially bore only the signature of the secretary. It is the petitioner's case that only much later, approximately nine months after the alleged resolution, signatures of about 703 persons were collected, and those signatures are now sought to be used to demonstrate retrospective ratification.

17. He drew the attention of this Court to a 2023 resolution stipulating that for important decisions, particularly those relating to demolition in the cemetery, all members are expected to attend and sign. He further pointed out that in the said resolution, the phrase “அனைவரும் ஏகமனதாக ஏற்றுக்கொண்டனர்” (everyone unanimously accepted) appears to be a later addition. Similar allegations of interpolation and fabrication were made and the manner in which documents were produced. According to him, these aspects require trial-level verification and cannot be lightly brushed aside at the threshold.

18. With regard to the alternative site at Konam, the learned



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counsel for the petitioner submitted that the church had purchased a separate piece of land for cemetery use and that a No Objection Certificate dated 16.11.2009 was issued by the concerned Town Panchayat, permitting the land to be used for a cemetery. The petitioner relied on the title documents and NOC, placed before me, to contend that there is no impediment to using that land as a cemetery and that the respondents' contention of "no permission" is unsustainable.

19. Finally, the learned counsel for the petitioner submitted that the scope of this revision is confined to the question as to whether the petition under Section 175(3) BNSS could have been dismissed for a mere technical defect at threshold. Once that is answered in favour of the petitioner, the learned Magistrate must be directed to consider the petition afresh on merits, after allowing the defect to be cured and, if a *prima facie* case is made out, to proceed in accordance with law, including directing registration of FIR.

20. The learned counsel appearing for the respondents 2 to 6 (church office-bearers) submitted that the parish is governed by a Parish Council consisting of about 40 members, including the Parish Priest, who functions as President under the control and supervision

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of the Bishop. The parish has several Neighbourhood Basic Christian Community units, each of which nominates representatives to the Parish Council. It was stated that many of the Parish Council members themselves have their forefathers buried in the very cemetery in question.

21. It was contended that under canon law and as recognised in a Division Bench judgment of this Court in the case of **C.S.Robert and another vs. M.Kanagappan**⁴, the ecclesiastical jurisdiction and secular administration of church properties, including the cemetery, vest in the Bishop and his delegate, the Parish Priest. Though that judgment did not expressly deal with cemeteries, the learned counsel sought to rely on its reasoning to argue that the legal ownership and control of the church and its properties, including the cemetery, rest with the Bishop/Parish Priest and not with individual members.

22. On the resolutions and notice, the learned counsel for the respondents 2 to 6 submitted that the Parish Council and the General Body were consistently seized of the issue of space constraints in the cemetery. Referring to resolutions from 2009 onwards, it was submitted that for many years, there has been an acknowledged

⁴ 2003(2)CTC 577



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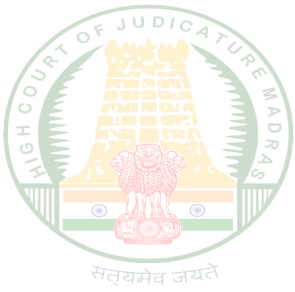
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shortage of burial space and that the petitioner himself had been nominated, as early as 2009, to liaise for permissions in respect of the Konam cemetery land.

23. It was pointed out that several announcements were made and read out during mass informing the parishioners about the proposed general body meeting and the cemetery issue on 22.12.2024, 25.12.2024, 29.12.2024 and again on the morning of 05.01.2025. According to the respondents, a General Body meeting was held on 05.01.2025, where the majority resolved to demolish the tomb superstructures, and not to remove or exhume bodies, so that, fresh burials could continue in the limited area.

24. The learned counsel for the respondents 2 to 6 contended that although the resolution carries the signatures of office-bearers, it reflects a decision of the General Body. Subsequently, to strengthen the record, signatures of about 703 parishioners who attended or supported the decision were obtained and produced. It was admitted that the petitioner was present in the General Body meeting but did not sign. It was submitted that the absence of the petitioner's signature does not invalidate the collective resolution taken by the body of parishioners.

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25. As to the physical constraints, the learned counsel for the respondents drew attention to the pleadings wherein it is stated that the cemetery extent is only 38 cents (16,920 sq.ft., 180 feet x 94 feet), including a chapel, and that with each grave/tomb occupying about 7 feet x 4 feet (28 sq.ft.) plus pathway space, the cemetery can accommodate only about 550 burials. Since 1986, there have been about 460 recorded burials, with 304 tombs in existence as of 07.01.2025, in addition to unrecorded burials without tombs. Thus, in their submission, there was practically no space left for fresh burials.

26. It was explained that historically, some 50 years ago, burials were done without elaborate tomb constructions and graves were identified only by wooden crosses, which in time decayed, allowing the same ground to be reused after decomposition of the remains. Modern practice of constructing permanent stone/granite tombs has, however, rendered reuse impossible, leading to a severe space crisis.

27. The learned counsel for the respondents 2 to 6 submitted that the action taken on 07.01.2025 and 08.01.2025 was limited to demolition of the tomb superstructures and not exhumation or removal of bodies. They contended that after the demolition of tombs, about 15 further burials were carried out, which demonstrates the



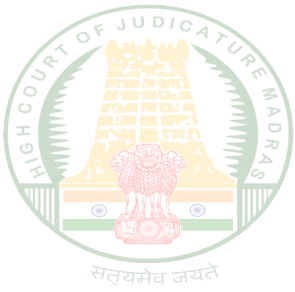
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necessity of the step in order to continue to use the only available cemetery land. The wooden coffins and remains, it was submitted, decompose over 5–10 years, making repeated use of the same plots possible.

28. Regarding the Konam land, it was contended that although the church had purchased the property, the requisite permissions from the revenue and police authorities for using it as a burial ground were not granted and, therefore, no burials were ever permitted there. The Town Panchayat's NOC, relied on by the petitioner, was said to be insufficient, and the petitioner was described as lacking competence to secure the full set of approvals needed for establishing a functioning cemetery.

29. The learned counsel further submitted that the respondents themselves lodged complaints on 11.02.2025 and 12.02.2025 alleging that the petitioner's group trespassed into the cemetery and constructed about 250 structures in the graveyard after the demolition of tombs, without authority. Therefore, if this Court were to direct registration of FIR at the instance of the petitioner, it was argued that parity requires similar criminal action against the petitioner and others for alleged trespass and illegal construction.



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30. On maintainability, the learned counsel pointed out that the police had already closed the original complaint as “action dropped” and that the RDO had passed a *status quo* order. The petitioner did not challenge the “action dropped” order. It was also emphasised that whereas the petition under Section 175(3) BNSS before the Magistrate had seven petitioners, the present revision is filed only by one of them, which according to the respondents raises doubts on the maintainability and *locus*.

31. The learned Government Advocate (Criminal Side) appearing for the 1st respondent fairly submitted that, following the dispute between the factions in the parish, the Revenue Divisional Officer had passed an order directing *status quo* to be maintained.

32. On the aspect of resolutions and minutes, the learned Government Advocate stated that if a decision is truly a decision of the General Body, it is usual practice that all attending members sign the minutes, whereas in the case of an Executive Committee or Council decision, signatures of office-bearers may suffice. He thus pointed out deficiencies in the manner in which the alleged General Body resolution of 05.01.2025 was recorded and signed, while leaving

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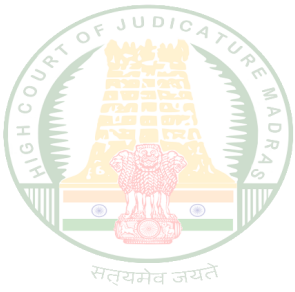
the legal effect of such deficiencies to be determined by the competent court.

33. He submitted that while ecclesiastical structures such as the Bishop-Parish Priest hierarchy may regulate internal church administration, such structures are subject to constitutional guarantees and human rights, and cannot override penal law in cases of alleged desecration of graves or destruction of property.

34. Heard the learned counsels on either side and carefully perused the materials available on record.

Analysis:

35. During the course of hearing, this Court observed that Christian denominations generally maintain common graveyards attached to churches and that individual Christian families do not usually possess private burial grounds. The Court posed the central question that even assuming the Bishop or Parish Priest is the ecclesiastical head and holds the property on behalf of the church, whether such authority extends to unilaterally demolishing existing cemeteries or tombs “one fine day” without the consent of the faithful whose forefathers are buried there.



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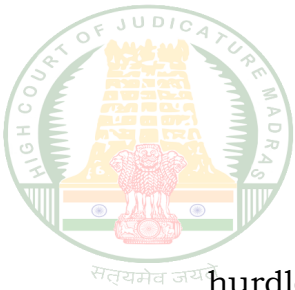
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36. When the respondents sought to rely upon a Division Bench judgment emphasising ecclesiastical control over church properties, this Court queried the relevance of that judgment to the present dispute, as the decision did not specifically address cemeteries or the rights of families over graves.

37. This Court also observed that describing the Bishop as “title holder” does not mean that he has an absolute right to “plough the cemetery like a field”. Any holder of property, particularly religious property dedicated to public or community use, is a trustee subject to constitutional limitations, human rights norms and statutory restrictions.

38. The Court made it clear that the immediate issue in this revision is whether the learned Magistrate was justified in rejecting the Section 175(3) BNSS petition for want of affidavit, in light of the Hon'ble Supreme Court's pronouncement in ***S.N. Vijayalakshmi & Others v. State of Karnataka & Another***⁵, that non-filing of an affidavit is a curable defect. The broader factual controversies over resolutions, signatures, alleged fabrication and rival complaints are matters to be examined by the appropriate forum once the procedural

⁵ 2025 INSC 917



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hurdle is removed.

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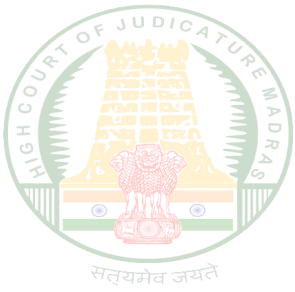
39. *Points for Determination:*

In light of the pleadings and submissions, the following points arise for consideration:

(i) Whether non-filing of a supporting affidavit along with a petition under Section 175(3) BNSS, 2023, is a curable defect and whether the learned Judicial Magistrate-II, Nagercoil, erred in dismissing the petition in Crl.M.P.No.984 of 2025 solely on that ground.

(ii) Whether, on the materials placed, a *prima facie* case of commission of an offence under Section 301 of the Bharatiya Nyaya Sanhita, 2023, and the TNPPDL Act is disclosed, warranting registration of FIR and investigation.

(iii) Whether a church cemetery can be treated as a mere property of the Bishop or Parish Priest, or whether it is in the nature of a sacred trust / endowment held for the benefit of the faithful, thereby limiting the authority of church administrators to unilaterally demolish existing graves/tombs.



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(iv) To what directions the learned Magistrate and the first respondent police are to be subjected in the facts and circumstances of this case.

Discussion and Findings:

40. As regards Point (i), the record shows that the petition under Section 175(3) BNSS was dismissed by the learned Judicial Magistrate solely on the ground that it was not accompanied by a supporting affidavit. No opportunity was given to the petitioners to cure the defect, nor was the substance of the allegations evaluated.

41. In ***S.N. Vijayalakshmi & Others v. State of Karnataka & Another***⁶, the Hon'ble Supreme Court has categorically held that non-filing of a supporting affidavit is a curable defect, and that before passing any substantive order on a complaint/application of this nature, the Magistrate must afford an opportunity to file such affidavit.

42. In view of the binding nature of the Hon'ble Supreme Court's pronouncement, this Court is constrained to hold that the learned Judicial Magistrate-II, Nagercoil, was not justified in

⁶ 2025 INSC 917



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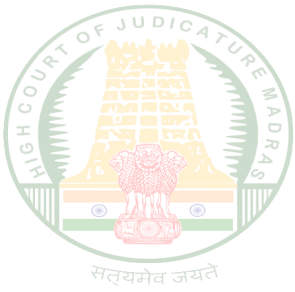
dismissing Crl.M.P.No.984 of 2025 outright for want of supporting affidavit. The defect was curable and the petitioners ought to have been given an opportunity to file the affidavit before passing any order on merits.

43. Accordingly, Point (i) is answered in favour of the petitioner. The impugned order dated 19.05.2025 in Crl.M.P.No.984 of 2025 is liable to be set aside on this ground alone.

44. Coming to Point (ii), this Court is conscious that the detailed factual dispute, including the validity of resolutions, the authenticity of signatures, the extent of demolition and the rival complaints, is to be determined on evidence. At this revision stage, the Court is only concerned with whether the allegations, if taken at face value, disclose a *prima facie* case warranting registration of FIR and investigation.

45. Section 301 of the Bharatiya Nyaya Sanhita, 2023, reads as follows:

“301. Trespassing on burial places, etc., Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be



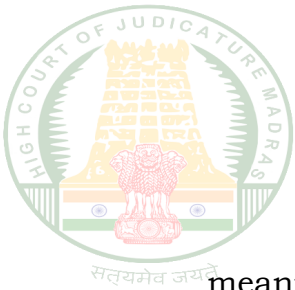
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insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

46. The petitioner alleges that the respondents 2 to 6, acting as office-bearers of the church, brought heavy machinery and demolished existing graves/tombs in a century-old cemetery without consent of the families of the deceased or the broader church membership. Respondents, on their part, admit that the tomb structures were demolished, though they deny removal of corpses and contend that the action was pursuant to a General Body resolution.

47. At this stage, the Court need not render findings on whether the General Body resolution is genuine, valid or binding. The admitted fact that tomb structures of existing graves were demolished, coupled with the petitioner’s case that families were neither consulted nor consented, *prima facie* attracts the definition of “offering indignity to any human corpse” and “trespass in any place of *sepulture*” within the



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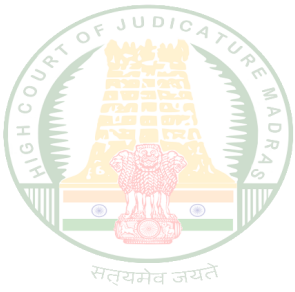
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meaning of Section 301 BNS. The question as to whether there was sufficient consent, authority or justification is a matter of defence to be probed in investigation and, if necessary, trial.

48. Further, inasmuch as the demolition was allegedly carried out using JCBs on graves, which are structures erected over burials, it also *prima facie* attracts the provisions of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, treating such tombs/grave structures as “property” liable to protection from wilful damage.

49. This Court is therefore satisfied that the allegations disclose a *prima facie* case under Section 301 BNS and the TNPPDL Act and that the matter cannot be relegated to mere revenue or civil proceedings.

50. On Point (iii), the respondents’ principal defence on the merits is that under canon law and ecclesiastical hierarchy, the Bishop and Parish Priest exercise ownership and control over church properties, including cemeteries, and that decisions taken by the Parish Council/General Body pursuant to such authority permit demolition of tombs in the cemetery.

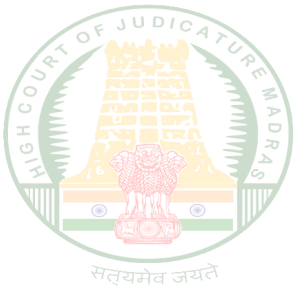


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51. This Court is unable to accept the proposition that ecclesiastical ownership extinguishes or overrides the communal and trust character of cemeteries. Church cemeteries have, for centuries, been regarded as sacred places dedicated to the use of the faithful. In canon law, they are classified as “*res sacrae*” (sacred things) and once consecrated and used, they acquire a special status. The Code of Canon Law, 1983 (Canons 1205–1243), particularly Canons 1240 and 1241, treats cemeteries as sacred places that must be preserved with dignity, and requires appropriate authority and due process before any closure, alienation or substantial alteration.

52. In Indian secular law, too, cemeteries and burial grounds are recognised as public trusts or religious endowments for the benefit of the community. Time and again, it has been held by this Court that burial grounds cannot be disturbed except strictly in accordance with law and upon justifiable grounds. Needless to state that properties dedicated for religious and charitable purposes, including cemeteries, are to be treated as trust property, and unilateral interference by administrators without the consent of beneficiaries is not permissible.



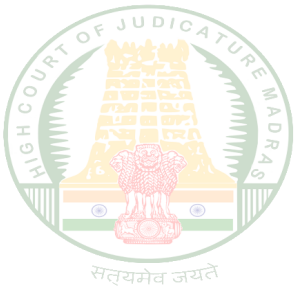
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53. I am of the considered view that, properties such as cemeteries dedicated for use of a congregation must be treated as religious endowments held in trust, and any change in their use or demolition must comply with the relevant statutory provisions governing religious and charitable endowments and cannot be effected by unilateral decisions of administrators.

54. Thus, both canon law and Indian secular jurisprudence view cemeteries not as the private estate of ecclesiastical authorities but as sacred trusts held for the benefit of the faithful and for posterity. The Bishop or Parish Priest, at best, is a trustee or custodian; such status does not clothe them with absolute power to plough, demolish or repurpose cemeteries at will, especially where graves of identified families already exist.

55. The right to life under Article 21 of the Constitution of India has, through judicial interpretation, been held to include the right to dignity in death and the right to decent burial. Human dignity attaches not only to the living but also to the dead, and that proper treatment of human remains and burial is an integral aspect of that dignity.



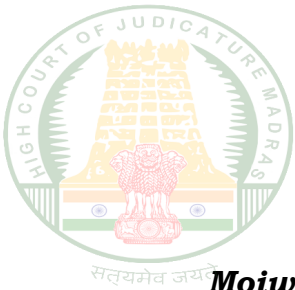
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56. Internationally, Article 18 of the International Covenant on Civil and Political Rights (ICCPR), 1966, to which India is a party, guarantees freedom of thought, conscience and religion, including the freedom to manifest one's religion in worship, observance, practice and teaching. Burial practices form an integral part of religious observance and cultural identity. The UN Human Rights Committee in General Comment No.22 (1993) has affirmed that religious freedom extends to rituals and observances, which include burial and funerary practices.

57. The UN Principles on the Protection of Human Remains and Burial Grounds and the UN Basic Principles on Cultural Heritage protection treat cemeteries as both tangible and intangible cultural heritage of communities, emphasising the need to safeguard them from desecration and arbitrary destruction.

58. The European Court of Human Rights, in ***Sabanchiyeva and Others v. Russia*** (2013), held that arbitrary interference with burial and disposal of bodies violated Article 8 of the European Convention on Human Rights (right to respect for private and family life). Similarly, the Inter-American Court of Human Rights in



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Moiwana Village v. Suriname (2005) held that destruction of burial sites and interference with funeral practices constitute violations of cultural identity and collective dignity of communities.

59. Though these international decisions are not binding precedents in India, they have persuasive value and reinforce the universal principle that burial grounds and cemeteries are loci of human dignity, privacy, family memory and cultural identity, and that their arbitrary demolition or desecration is incompatible with contemporary human rights standards.

60. Therefore, when church authorities invoke ecclesiastical ownership to justify demolition of tombs in a century-old cemetery without clear and informed consent of all affected families and without exploring less intrusive alternatives, such as using alternative cemetery land or regulated reuse based on transparent norms, they run afoul not only of domestic constitutional and statutory protections but also of India's international human rights obligations.

61. This Court therefore holds, for the present case, that a church cemetery is a sacred trust held for the benefit of the faithful and for posterity, and not a disposable asset in the hands of



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administrators. Any decision radically affecting existing graves and tombs must be taken, if at all, with scrupulous regard to constitutional norms, human dignity, statutory requirements and bona fide consent processes.

62. It is a matter of concern that, in the present case, the first respondent police appear to have closed the complaint as “action dropped” and diverted the matter into the realm of revenue proceedings, resulting in a *status quo* order from the RDO. Allegations of desecration of existing graves in a cemetery, however, are not merely matters of civil or revenue administration, they squarely attract criminal law under Section 301 BNS and the TNPPDL Act.

63. While the *status quo* order of the RDO may regulate ongoing physical acts in the cemetery, it does not displace the statutory obligation of the police to register and investigate cognizable offences. To treat such a serious complaint as purely a revenue issue is, in the considered view of this Court, an abdication of statutory duty.

64. For these reasons, this Court is of the view that the learned Magistrate, upon remand and curing of the procedural defect of non-filing of affidavit, must consider the petition on merits, call for a report



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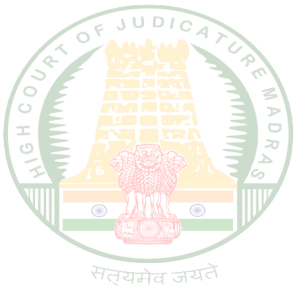
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from the revenue authorities as well as the first respondent police, and thereafter pass appropriate orders in accordance with the ratio of ***S.N. Vijayalakshmi & Others v. State of Karnataka & Another***⁷, and other binding precedents.

65. In view of the foregoing discussion, the impugned order dated 19.05.2025 passed by the learned Judicial Magistrate-II, Nagercoil, in Crl.M.P.No.984 of 2025 is hereby set aside. The matter is remanded to the learned Judicial Magistrate-II, Nagercoil. The learned Magistrate shall permit the petitioner to file the requisite supporting affidavit in conformity with the law laid down by the Hon'ble Supreme Court in ***S.N. Vijayalakshmi & Others v. State of Karnataka & Another***⁸,. After receipt of the affidavit, the learned Magistrate shall call for reports from the revenue authorities and from the first respondent police, and shall thereafter consider the petition afresh under Section 175(3) BNSS, 2023, on its own merits and in accordance with law, keeping in view the observations made by this Court regarding the scope of Section 301 of the Bharatiya Nyaya Sanhita, 2023, the TNPPDL Act, and the trust-like and sacred character of church cemeteries.

⁷ 2025 INSC 917

⁸ 2025 INSC 917



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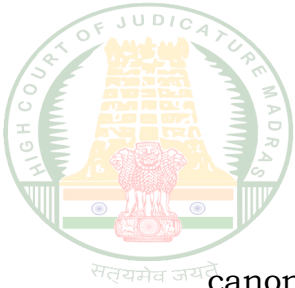
66. For abundant clarity, it is observed that the allegations in the complaint, if taken at face value, do disclose a *prima facie* case under Section 301 BNS and the TNPPDL Act, and that the revenue authorities cannot supplant or substitute the criminal law process in matters involving alleged desecration of graves.

67. It is made clear that the observations contained in this order on the merits of the parties' rival contentions are only for the purpose of deciding this revision and the question of remand, and shall not prejudice the learned Magistrate or any other Court/authority in independently appreciating the evidence and materials that may be brought on record in subsequent proceedings, including any investigation or trial.

68. This Criminal Revision Case is accordingly allowed in the above terms.

69. This Court places on record its appreciation for the assistance rendered by Mr. Alwin Balan, Standing Counsel for the Tirunelveli Diocese and Trust Association (TDTA), who, though not arrayed as a party, addressed the Court on the customary and

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canonical practices relating to Christian cemeteries and highlighted the human rights implications of unilateral demolition of graves.

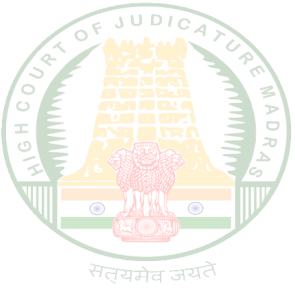
16.12.2025

NCC : Yes / No
Index : Yes / No
Internet :Yes

Sml

To

- 1.The Judicial Magistrate-II Court,
Nagercoil.
- 2.The Inspector of Police,
Naesomony Nagar Police Station,
Nagercoil,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI ,J.

Sml

Order made in
CrI.R.C.(MD)No.1181 of 2025

Dated: 16.12.2025