

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2015

DELIVERED ON : 10.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.8812 and 7072 of 2015

M.Gowri Shankar
N.Gowri Shankar

..Petitioner in Crl.O.P.8812/2015
..Petitioner in Crl.O.P.7072/2015

Vs

1.The Superintendent of Police
Namakkal District
Namakkal.

2.The Deputy Superintendent of Police
Namakkal District
Namakkal.

3.The Inspector of Police
Pelukurichi Police Station
Pelukurichi
Namakkal District.

.. Respondents in Crl.O.P.8812/2015

1.The Superintendent of Police
Namakkal District.

2.The Inspector of Police
Pelukurichi Police Station
Namakkal District.

.. Respondents in Crl.O.P.7072/2015

Crl.O.P.No.8812 of 2015 filed under Section 482 Cr.P.C., to direct the respondents to provide police protection for fencing the lands belonging to the petitioner in S.f.No.336/2-B, 336/4-B, 336/5-B, Belukurichi Village, Namakkal District and provide adequate police protection for harvesting the lands based on the complaint given by the petitioner dated 12.02.2015.

Crl.O.P.No.7072 of 2015 filed under Section 482 Cr.P.C., to direct the respondents to provide police protection to the petitioner to harvest his crops in his property.

IN CRL.O.P.8812 OF 2015:

For Petitioner	Mr.S.Sithirai Anandam
For Respondents	Mr.C.Emalias, Addl.Public Prosecutor

IN CRL.O.P.7072 OF 2015:

For Petitioner	Mr.S.Parthasarathy
For Respondents	Mr.C.Emalias, Addl.Public Prosecutor

COMMON ORDER

This Court passed final orders on 08.04.2015 and thereafter, it was brought to the notice of this Court that, the same petitioner had filed another petition, Crl.O.P.No.7072 of 2015 for the same relief. Crl.O.P.No.7072 of 2015 was filed on 17.03.2015 through Advocates M/s S.Parthasarathy, J.Kavitha and T.Anusuya. In Crl.O.P.No.7072 of 2015, the petitioner has styled himself as N.Gowri Shankar. Suppressing this fact, this petitioner has filed Crl.O.P.No.8812 of 2015 through Advocates M/s S/Sithirai Anandam and P.Eswaran on 06.04.2015. In Crl.O.P.No.8812 of 2015 he has styled himself as M.Gowri Shankar. This was brought to the notice of this Court by the learned counsel for the opposite party. Therefore, this Court issued notice to Gowri Shankar for his appearance. Gowri Shankar appeared before this Court and has filed an affidavit, wherein he has stated as follows in paragraph no.4:

"4. I submit that in the year 2014 I approached an advocate by Mr.Sithirai Anandam at Chennai, for filing the petition for police protection. I submit that again in this year

the said Karthik Raja trying to cause trouble to harvest the agricultural produce, hence in the month of February 2015 I approached a lawyer at Sangagiri by name Murugan for filing the petition. I submit that since my health is not co-operate I approached the advocate nearer to my native. I approached him for number of times to know whether the case has been filed or not, if filed the status of the case, but I could not contact him in spite of my best efforts hence I thought that he had not taken steps to file the case, in the mean time the agricultural produce losing its value due to out-date harvest. In order to safe guard the agricultural produce and protect its value from diminishing, I contacted my earlier advocate Mr.Sithirai Anandam at Chennai during the month of March 2015 and requested him to file the petition. Accordingly he filed Crl.O.P.No.8812/2015 and obtained order on 08.04.2015. I submit that during second week of April 2015 the Sangagiri Advocate contacted me and told that the direction petitioner will be heard soon. I was shocked with that, since I already filed a case. I also informed him that since I could not contact you during February 2015, I waited for some time, thereafter I approached another lawyer at Chennai and filed the case. I submit that I came to know that Sangagiri Advocate had taken steps to file the case only after he informed me during the 2nd week of April 2015."

2. The explanation given by Gowri Shankar does not cut ice. It is apparent that he has filed the first case as N.Gowri Shankar and the second case as M.Gowri Shankar and he has not disclosed about the filing of Crl.O.P.No.7072 of 2015 in Crl.O.P.No.8812 of 2015.

3. Under such circumstances, this Court recalls the order dated 08.04.2015 passed in Crl.O.P.No.8812 of 2015 on the ground that, the petitioner has played fraud on this Court. The Supreme Court in A.V.Papayya Sastry vs. Government of Andhra Pradesh [(2007) 1 AIR SCW 2212] has held that, an order obtained by fraud has to be treated as nullity and should be recalled. In such cases the provisions of Section 362 Cr.P.C. will have no application.

P.N.PRAKASH, J.

gms

In the result, both the petitions are dismissed.

10.07.2015

gms

To

1.The Superintendent of Police
Namakkal District
Namakkal.

2.The Deputy Superintendent of Police
Namakkal District
Namakkal.

3.The Inspector of Police
Pelukurici Police Station
Pelukurici
Namakkal District.

4.The Public Prosecutor
High Court, Madras.

Pre-delivery order in
Crl.O.P.Nos.8812 and 7072 of 2015