

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2016

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.OP.No.11055 of 2016 and 12484 of 2016
and Crl.M.P.No.5720 of 2016 in Crl.O.P.No.11055 of 2016

1.Muthukumar
2.Subha

..Petitioner
in both Crl.OPs

Vs

1.The Executive Magistrate &
Deputy Commissioner of Police [L&O],
Salem City, Salem District.

2.State rep by
The Inspector of Police,
Pallapatti Police Station,
Salem District.

3.Muthu
4.Muthukrishnan
5.Bharathi

..Respondents
in Crl.OP.11055/16

1.The Deputy Commissioner of Police,
Salem City, Salem District.

2.State rep by
The Inspector of Police,
Pallapatti Police Station,
Salem District.

..Respondents
in Crl.OP.12484/16

Crl.OP.No.11055 of 2016 : Criminal Original Petition filed
under Section 482 of the Code of Criminal Procedure to call
for the records pertaining to the Case No.272 of 2016 dated
01.05.2016 pending on the file of the 1st respondent herein and
to quash the same.

Crl.OP.No.12484 of 2016 : Criminal Original Petition filed
under Section 482 of the Code of Criminal Procedure to direct
the respondents not to harass the petitioners.

For Petitioners : Mr.R.Nalliyappan
in both Crl.OPs

For R1 and R2 : Mr.C.Emalias, APP
in both Crl.OPs

For R3 to R5 in : Mr.T.Pappaiah Dharmarajan
Crl.OP.11055/16

C O M M O N O R D E R

Cr1.OP.No.11055 of 2016 has been filed to quash the proceedings in Case No.272 of 2016 dated 01.05.2016 pending on the file of the 1st respondent herein.

Cr1.OP.No.12484 of 2016 has been filed to direct the respondents not to harass the petitioners.

2. Heard the learned counsel for the petitioners; learned Additional Public Prosecutor appearing for respondents 1 and 2 and perused the materials placed on record.

3. Today, Mr.R.Vincent, Inspector of Police, Pallapatti Police Station, Salem District is present before this Court.

4. For the sake of convenience, the parties will be referred to by their name. Muthu is a licensee of a shop near Salem bus stand belonging to the Salem Municipal Corporation and that, he was running a Hotel in the name of Hotel Aarthi. Muthukumar is Muthu's son. It appears that initially, the father and son duo were happily running the Hotel and thereafter, some differences have cropped. When the father wanted to run the Hotel himself, it was objected to by Muthukumar, on account of which, there was a wrangle. The Respondent Police registered a case in Crime No.153 of 2016 under Section 107 Cr.P.C. and referred both the parties to the Deputy Commissioner-cum-Executive Magistrate, Salem.

5. The Deputy Commissioner-cum-Executive Magistrate issued a notice dated 01.05.2016 to both Muthu and Muthukumar for their presence on 22.05.2016 for the proceedings under Section 107 Cr.P.C. At that juncture, Muthukumar filed Cr1.O.P.No.11055 of 2016, challenging the notice dated 01.05.2016 and at the time of admission, this Court had granted stay on 20.05.2016 for a limited period of three weeks.

6. In the meantime, Muthu made a representation dated 02.05.2016 to the Commissioner of Police and filed W.P.No.17927 of 2016 for a Mandamus to the Commissioner of Police to dispose of the representation. This Court, by order dated 27.05.2016 in W.P.No.17927 of 2016 directed the Commissioner of Police, Salem to consider and dispose of Muthu's representation dated 02.05.2016.

7. Pursuant to the orders passed by this Court, the Commissioner of Police issued notice to both Muthu and Muthukumar and after hearing both of them, has passed a detailed order dated 28.06.2016 stating that Muthukumar had not produced any document to worth its salt to show that he was running the Hotel. Since license was in the name of Muthu, the Commissioner recorded a finding that Muthu has a right to run the Hotel as per the rules and regulations of the

Corporation of Salem. Muthukumar attempted to take forcible possession of the Hotel and on the complaint given by one Ramamurthy, a case in Pallapatti Police Station Crime No.213 of 2016 has been registered against Muthukumar and his group for offences under Section 147, 427 and 442 IPC and investigation is in progress.

8. Mr.Nalliyappan, learned counsel appearing for Muthukumar submitted that the Police have acted in a highhanded manner by attempting to dispossess him from the shop and hand over the shop to his father.

9. Per contra, learned Additional Public Prosecutor submitted that even while the dispute was pending between father and son, the Salem Corporation brought the shop for auction, in which, Muthu participated and had been declared as the successful bidder by the Salem Corporation on 22.03.2016.

10. In the light of the above, this Court is of the view that there are no merits in both the petitions. As regards CrI.O.P.No.11055 of 2016, it is only a show cause notice that has been issued by the Deputy Commissioner-cum-Executive Magistrate, calling upon the petitioner to appear and that cannot be a subject matter of challenge in a proceedings under Section 482 Cr.P.C.

In the result, both the petitions are dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Executive Magistrate &
Deputy Commissioner of Police [L&O],
Salem City, Salem District.

2.The Inspector of Police,
Pallapatti Police Station,
Salem District.

3.The Public Prosecutor,
High Court, Chennai.

+ 1 cc to MR.R. Nalliyappan, Advocate SR.42288

CrI.OP.Nos.11055 and 12484 of 2016

GJII(CO)

En 12.08.16

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