

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.Rc.No.625 of 2016

Laloo @ Lemon Anandaraj

... Petitioner

Vs.

The District Magistrate,
Puducherry.

... Respondent

Prayer: This Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C., to call for the records and to set aside the order dated 31.03.2016 passed in M.C.No.36 of 2016 on the file of the respondent.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.M.P.Thangavel,
Additional Public Prosecutor
(Puducherry)

O R D E R

With the consent of both the learned counsel, the Criminal Revision Petition is taken up for hearing.

2.Heard both sides. No counter has been filed by the Respondent.

3.The Petitioner has preferred the instant Criminal Revision Petition before this Court as against the order dated 31.03.2016 in M.C.N.36 of 2016 passed by the District Magistrate, Puducherry.

4.The District Magistrate, Puducherry in M.C.No.36 of 2016 had passed the impugned order against the Revision Petitioner (u/s.144 Cr.P.C.,) and the same runs as under:

"WHEREAS, it has been made to appear to me that you have trivial and insignificant respect to the judiciary and rule of law and involved in various offences against public tranquility, offences against public & private property, offences affecting decency & morals and offences affecting human body and that you have become a perennial source of threat to the community, public peace and order:

AND WHEREAS, I am convinced of your involvements in various criminal cases such as offences affecting human body, offences against public and private property, creating fear and panic in the minds of the innocent public. You have committed offences under (1) Cr.No.247/2006 u/s.302, 324 r/w.34 IPC, dated 18.08.2006 of Orleanpet PS, (2)Cr.No.124/2007 u/s.147, 148, 302 IPC r/w.149 IPC dated 08.05.2007 of D'Nagar PS, (3) Cr.No.315/2007 u/s.302, 201 r/w.149 IPC @ 341, 302, 201, 109, 120(b) r/w.149 IPC dated 06.10.2007 of Auroville PS, (4)Cr.No.548/2009 u/s.27(1) Arms Act & 34 B IX PP Act, dated 12.11.2009 of Orleanpet PS, (5)Cr.No.582/2009 u/s.27(1) Arms Act & 34 B IX PP Act, dated 30.12.2009 of Orleanpet PS, (6) Cr.No.401/2010 u/s.447, 294, 506 r/w.34 IPC 447, 294, 506(ii) IPC & 27(1) Arms Act r/w.34 IPC, dated 16.09.2010 of Orleanpet PS, (7)Cr.No.444/10 u/s.448, 427, 506(ii) r/w.34 IPC @ 147, 148, 448, 427, 188, 506(ii) IPC r/w.149 IPC dated 06.11.2010 of Orleanpet PS, (8)Cr.No.13/2012 u/s.451, 387, 427, 506(ii) r/w.34 IPC @ 147, 148, 451, 387, 427, 506(ii) r/w.149 IPC dated 10.01.2012 of Orleanpet PS, (9)Cr.No.156/2013 u/s.143, 148, 324, 302 IPC, dated 27.03.2013 of Kottakuppan PS. It is evident from the above cases that you have involved in committing serious offences which would endanger the life of innocent public and their peace and order. Your vengeful acts along with your accomplices against your opponents have created panic in the minds of the people, especially among the children and women.

AND WHEREAS, it is brought to the notice of the undersigned that you are likely to indulge in unlawful activities, obstruction and disturbance of peace and tranquility causing damage to life and property of and intimidation to general public;

AND WHEREAS, based on the report laid before me, I am of the opinion that if you are allowed to reside within the limits of Puducherry, you will indulge in serious offences like murder, assault, extortion, criminal trespass, intimidation, damages to public and private properties, obstructions, annoyance etc and disturb public peace and order. Such situations cannot be handled effectively by taking recourse to usual procedures contemplated by law and hence, it is necessary that special provision under Section 144 of Cr.P.C., be invoked to take action against you to prevent harm to life and properties of the innocent citizens and uphold public peace and order;

AND WHEREAS, I am satisfied that your activities will endanger human life and properties and your presence is a threat to public tranquility in Puducherry District and therefore, an immediate action is required for curtailing your illegal activities in the locality;

NOW THEREFORE, based on the reasons stated above, I, Dr.S.Sundaravadivelu, I.A.S., District Magistrate, Puducherry in exercise of powers conferred under Code of Criminal Procedure do hereby prohibit you under Section 144 of Cr.P.C., from entering into the Puducherry District for a period of two months from the date of this Order or till any further orders are passed by the Competent Authority revoking this prohibition as per law, whichever is earlier except when you are summoned to attend the cases in any of the Courts in Puducherry. However, you may represent against the order before the undersigned by post or by counsel."

5.Assailing the validity, legality and correctness of the impugned order dated 31.03.2016 in M.C.No.36 of 2016 passed by the District Magistrate, Puducherry (Government of Puducherry), the Petitioner has filed the present Criminal Revision Petition by taking an emphatic stand that the Respondent/District Magistrate, Puducherry has passed the impugned order without proper application of mind and in fact, the impugned order does not spell out any emergency situation to justify the 'Ex-parte Order' without serving any notice on the Petitioner or without providing an opportunity of being heard to the Petitioner.

6.The Learned counsel for the Petitioner brings it to the notice of this Court that even though the impugned order was passed by the Respondent on 31.03.2016, the same was served on the Petitioner only on 07.04.2016.

7.The Learned counsel for the Petitioner takes a core plea that even the cases referred to at para 2 of the impugned order (of the case) had resulted in an acquittal of the Petitioner. It is also represented that the impugned order was passed by the Respondent with a view to victimise the Petitioner in connection with the ensuing Assembly Election.

8.Per contra, it is the submission of the Learned Additional Public Prosecutor, Puducherry for the Respondent that as against the Petitioner in respect of Cr.No.401 of 2010, the case is pending in C.C.No.336 of 2010. Further, in other three cases viz., Cr.No.444 of 2011 pending in C.C.No.254 of 2011, Cr.No.13/2012 in C.C.No.294 of 2012 and in Cr.No.156 of 2013, investigation is pending. Except the aforesaid cases, in other cases the Petitioner was acquitted and only because of the Petitioner's activities, the Respondent had passed the impugned order, which is a valid one in the eye of Law.

9.At this juncture, this Court very significantly points out that the preservation of the public peace and tranquility is the primary rule of the Government and the power envisages u/s.144 Cr.P.C., is conferred on the Executive Magistrate enabling him to perform that function in an effective, efficacious and diligent manner during emergent situation. Therefore, it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation, the power must extend to restraining the persons from doing acts perfectly lawful in themselves, for, it is quite obvious when there is a conflict between public interest and private rights, the earlier one will prevail.

10.It is to be remembered that exercise of power under Section 144 Cr.P.C., must be sought for as an aid of those rights and against those who interfere with the lawful exercise thereof. There is no two opinion of fact that law does not permit pressing into service of Section 144 Cr.P.C., for any political or extraneous consideration as per decision Praveen Bhai Thogadia V. State of Karnataka reported in 2003 (CrLJ) at page 4502 (4505) (Kant).

11.The most important aspect one has to keep in mind under Section 144 Cr.P.C., is that an order under the Section should never be passed on the mere opinion of the officials or

individuals who may be entertaining such prejudices. In reality, there must be positive material to justify an order as per decision D.S.Joseph V. State of Uttar Pradesh reported in 2005 Criminal Law Journal 709 (712) (All).

12. Even an Ex-parte order passed without narrating or explaining how the situation was emergent and time available was not sufficient to serve notice is not maintainable as per decision Manohar Gajenan Joshi V. S.B. Kukarni reported in 1989 CrLJ 1364 (Bom). Also that, it cannot be brushed aside that Section 144 Cr.P.C., does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title to properties or entitlements to rights.

13. In this connection, this Court relevantly points out that an 'Ex-parte' order can only be passed under two circumstances viz., a) in cases of 'emergency' and b) where the circumstances do not admit of personal service. To put it succinctly, a just or mere statement made by the Magistrate that he is satisfied to the effect that there is every possibility for serious breach of peace between the parties as well, public tranquility is not sufficient to exercise power under Section 144(1) and Section 144(2) Cr.P.C.

14. Ordinarily, an order under Section 144 Cr.P.C., ought not to be made, without providing an opportunity to the person against whom it is proposed to make it, to show cause as why it should be passed as per decision Tirunarasimha Chari, (1895) 19 Mad 18, 20.

15. It is to be noted that the Magistrate or the State Government may rescind or vary the order either Suo-motu or on the Petition of an individual who is affected. Immediately after receipt of the said Petition, an individual is entitled in Law to be heard and in fact, reasons must be ascribed in writing at the time of rejecting the Petition. The nature of an order under Section 144 Cr.P.C., is required to meet an eventuality/emergency and the same is not meant to be either permanent or semi permanent in nature. No doubt, an order under Section 144 Cr.P.C., is of transitory in nature. Ofcourse, it is for the District Magistrate to exercise its powers quite in tune with the provisions of Section 144 Cr.P.C., as per decision of the Hon'ble Supreme Court Ishtiaq Hussain Farooqui V. State of U.P., reported in AIR 1988 SC at page 93.

16. Furthermore, an order under Section 144 is basically an executive function. The power showered on the State Government is an independent power and it is an executive power as per decision of Hon'ble Supreme Court in State of Bihar V. Misra

reported in AIR 1971 SC at page 1667, 1674. Inasmuch as an order under Section 144 Cr.P.C., is administrative in character and therefore, it is neither judicial nor quasi judicial in the eye of Law, as opined by this Court.

17. At this stage, this Court worth recalls and recollects the decision Pramod Muthalik V. District Magistrate, Davangere [2003 (3) Crimes 510] wherein it is observed and held that "a blanket order prohibiting entry of the petitioner leader of political organisation in the district for a period of one month, merely on the ground that his inflammatory speeches would create tension in the area, without providing material to the petitioner would be bad in law, and would be set aside".

18. No doubt, Section 144 Cr.P.C., deals with immediate prevention and speedy remedy. The established fact for an order under Section 144 Cr.P.C., is urgency requiring an immediate and speedy intervention by passing an order. In fact, the order must set out the material facts of the situation as per decision of the Hon'ble Supreme Court in Re Ramlila Maidan Incident reported in 2012 (2) SCC (Cri) 241.

19. Apart from that, the order under Section 144 Cr.P.C., must recite facts from and on which satisfaction and opinion of the Magistrate can be inferred and founded as per decision In re, Amar Chand Baid [1997 (CrLJ) 867].

20. As far as the present case is concerned, it is an admitted fact that except the aforesaid four cases, in rest of the other cases filed against the Petitioner, the Petitioner was acquitted. However, this Court on going through the impugned order dated 31.03.2016 in M.C.No.36 of 2016 passed by the Respondent, is of the considered view that the said order has been passed merely on the opinion of the District Magistrate, Puducherry which is cemented only on presumptions/surmises/conjectures and there is no proof of positive material to satisfy the subjective conscience of this Court to justify the order dated 31.03.2016 passed by the Respondent. Therefore, this Court is perforced to interfere with the impugned order dated 31.03.2016 in M.C.No.36 of 2016 passed by the Respondent and sets aside the same because of the reason that the said order bristles with legal infirmities in the eye of Law. Consequently, the Criminal Revision Petition succeeds.

21. In fine, the Criminal Revision Petition is allowed and the impugned order dated 31.03.2016 passed by the Respondent is set aside by this Court for the reasons assigned in this Criminal Revision. It is abundantly made clear that allowing of

the present Criminal Revision Petition by this Court will not preclude the Respondent to pass fresh orders assigning justifiable reasons thereto, against the Petitioner in the manner known to Law and in accordance with Law.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

To

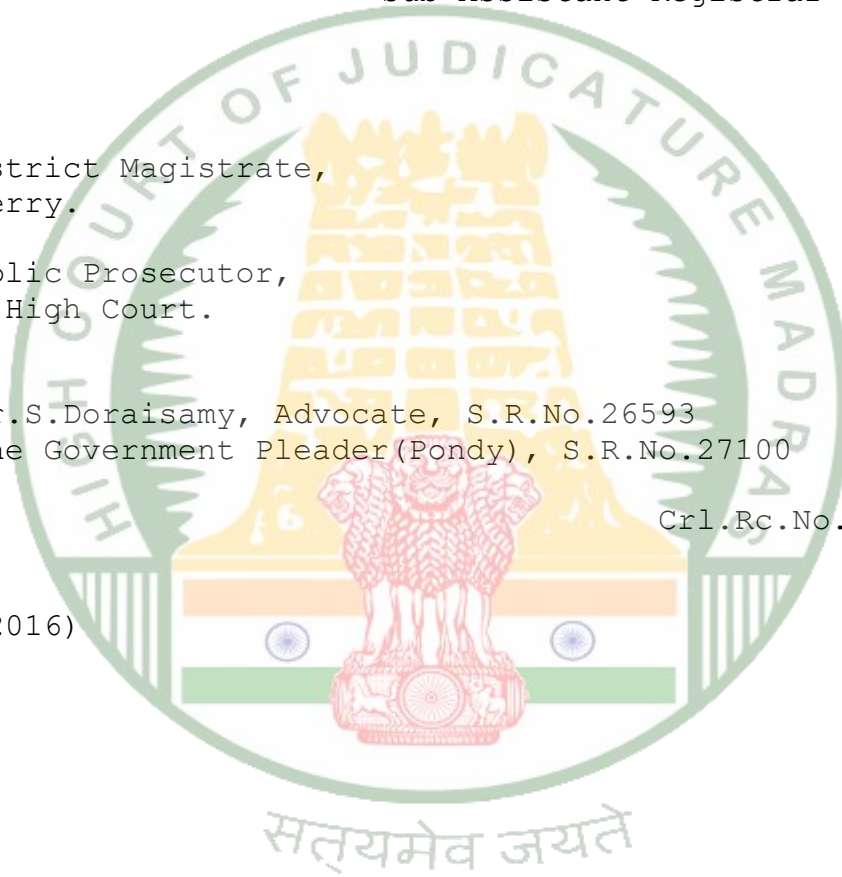
1. The District Magistrate,
Puducherry.
2. The Public Prosecutor,
Madras High Court.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.26593

+1cc to the Government Pleader(Pondy), S.R.No.27100

Crl.Rc.No.625 of 2016

PVS (CO)
CA(11/05/2016)



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