

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.09.2016

PRONOUNCED ON: 03.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.22139 of 2016 & Crl.M.P. No.10279 of 2016

1 Bhoopathi @ Murugan

2 Palanichamy

3 Palanivel

4 Ramesh

5 Bhoopathi

6 Suresh

Petitioners

vs.

1 State by Inspector of Police
Elanchipalayam Police Station
Thiruchengode Taluk
Namakkal District

2 The Sub-Divisional Executive
Magistrate-cum-Revenue Divisional Office
Thiruchencode
Namakkal District

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records relating to the proceedings dated 03.09.2016 made in M.C. No.03-2016 (C) passed by the second respondent herein and quash the same.

For petitioners

Mr. S. Senthilnathan

For respondents Mr. C. Emalias
 Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records relating to the proceedings dated 03.09.2016 made in M.C.No.03-2016 (C) passed by the second respondent herein and quash the same.

2 On the report filed by the Inspector of Police, Elanchipalayam Police Station in Crime No.246 of 2016, the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, Thiruchengode Taluk, Namakkal District, has initiated proceedings under Section 145, Cr.P.C. against the petitioners herein and has issued notice to them for their appearance, challenging which, the petitioners are before this Court.

3 Mr. S. Senthilnathan, learned counsel for the petitioners submitted that an FIR under Section 145, Cr.P.C. cannot be registered as it does not disclose commission of a cognizable offence and in support of this contention, he placed reliance upon a judgment of a learned Single Judge of this Court in *K. Pounrajan vs. The Collector, Chennai District, Chennai and others [(2004) MLJ (Crl.) 55]*. He also contended that the notice is bad in law inasmuch as a proceedings under Section 145

Cr.P.C. can be initiated only when there is a dispute with regard to land, but, in this case, the petitioners are not claiming any title over any land, despite which, the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, has directed the petitioners to appear with necessary documents to prove their possession. He further contended that instead of taking penal action against the opposite party, the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, has initiated Section 145, Cr.P.C. proceedings against the petitioners.

4 This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

5 As regards the first contention, the police have not registered a case under Section 145, Cr.P.C., as contended by the learned counsel for the petitioners. In the State of Tamil Nadu, the police have not been provided with any separate stationery for sending a report to the Executive Magistrate, for initiation of action under Section 145, Cr.P.C. Therefore, the police use the printed FIR book that is supplied by the Government for sending the report. Of course, in *Pounrajan* (supra), relied upon by the learned counsel for the petitioners, a learned Single Judge of this Court has held that police cannot register an FIR under Section 145, Cr.P.C., yet, on a reading of the contents written by the Inspector of Police in the FIR form, it is obvious to this Court that he has

brought to the notice of the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, that a dispute between two groups with regard to a burial ground and pathway has arisen, on account of which, the Inspector of Police is of the belief that there is likelihood of breach of peace. Therefore, though the FIR format has been used and a crime number has been given, the contents clearly show that it is a report that is sent by the police to the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer.

6 Section 145, Cr.P.C. clearly states that when there is even a little breach of peace with regard to a dispute in connection with a land, it is open to the Executive Magistrate to intervene and take steps to restore peace. That apart, the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, has only issued ordinary summons which is a show cause notice, which, in the considered opinion of this Court, cannot be a subject matter of challenge. It is open to the petitioners to appear before the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, with an advocate of their choice and present their case instead of challenging the summons itself, at the threshold.

7 As regards the contention of the learned counsel for the petitioners that the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, has asked the petitioners to produce necessary

documents, the summons will contain such a standard format and if the petitioners do not have any document, it is open to them to explain the same to the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

03.10.2016

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To

- 1 The Inspector of Police
Elanchipalayam Police Station
Thiruchengode Taluk
Namakkal District
- 2 The Sub-Divisional Executive
Magistrate-cum-Revenue Divisional Office
Thiruchencode
Namakkal District
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104

P.N. PRAKASH, J.

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