

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.7975 of 2016

A.B.F.Abdullah Faizee

.. Petitioner

Vs.

1.The Inspector of Police
Law and Order
Kattumannarkoil
Cuddalore District.

2.The Superintendent of Police
Cuddalore District.

3.M.A.Fatavudeen

.. Respondents

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to direct the respondents 1 and 2 to give necessary police protection during the celebration of 11th Annual Urs of the Saint Hazarath Faizee Shah Noori on 27.04.2016 and 28.04.2016 as they have been providing upto the last years 10th Annual Urs.

For Petitioner :Mr.S.B.Fazluddin

For R1 and R2 :Mr.C.Emalias

Addl. Public Prosecutor

For R3

: Mr.T.R.Rajagopal senior counsel
for Mr.S.Kadarkarai

ORDER

The petitioner has come forward with this petition seeking a direction to the respondents 1 and 2 to give necessary police protection during the celebration of 11th Annual Urs of the Saint Hazarath Faizee Shah Noori on 27.04.2016 and 28.04.2016 as they have been providing upto the last years 10th Annual Urs.

2.Learned counsel for the petitioner submits that the petitioner's father is a Saint and he died on 26.08.2005. His death anniversary is celebrated as Urs festival every year. In the year 2007, the petitioner has filed a similar petition in Crl.O.P.No.22570 of 2007 under Section 482 Cr.P.C. and obtained

police protection. According to the petitioner, the third respondent has filed a suit in O.S.No.45 of 2008 before the Sub-Court, Chidambaram for declaration that the defendants/petitioner and others are not entitled to perform Urs and any religious celebration to the corpse of their buried father in the suit property so long the dead body of Abdul Rasheed remains in the suit property and consequential injunction and also filed a suit in O.S.No.50 of 2008 for mandatory injunction directing the defendants to remove the corpse illegally and unlawfully buried in the suit property and on their failure to carry out the same, the Court may be pleased to implement the same through the process of Court by burying it in a notified place at the cost of the defendants.

3.It is further submitted by the learned counsel for the petitioner that even though both the suits have been decreed in favour of the third respondent after contest, the defendants/petitioner and others had filed an application under Order 41 Rule 5(2) of C.P.C. for stay the execution of the decree passed in the suit till the appeal is filed and obtain stay before the appellate Court. But the said application is still pending and no stay has been granted. He further submits that this year Urs falls on 27.04.2016 and 28.04.2016. Hence, the petitioner has sent a notice before the second respondent on 29.03.2016 requesting him to provide police protection during the days of Urs on 27.04.2016 and 28.04.2016. He has also relied upon the Division Bench judgment of this Court in W.P.No.8286 of 2009, which is filed by the petitioner and this Court had given direction to the police to give necessary police protection with certain conditions. Further, the petitioner has filed an appeal against the decree and judgment passed in O.S.Nos.45 and 50 of 2008, which is only the continuation of the suits and that the direction given by the Division Bench of this Court is still applicable to the present case till the final disposal of the appeal. Hence, the petitioner is entitled to police protection for performing Urs festival.

4.Learned senior counsel appearing on behalf of the third respondent submits that as per the judgment of this Court made in W.P.No.8286 of 2009, police protection has given only till the disposal of the civil suits. The civil suits were decreed on 21.12.2015 on merits after letting oral and documentary evidence. So the petitioner is not entitled to perform Urs as per the decree passed in O.S.Nos.45 and 50 of 2008. He further submits that this petition, which is filed under Section 482 Cr.P.C., itself is not maintainable, because the civil suits were already ended in favour of the third respondent. So the present petition is filed only to circumvent the decree passed in O.S.Nos.45 and 50 of 2008. Further, the learned senior counsel has drawn attention of this Court by relying upon para-10 of the decision of this Court dated 22.07.2008 made in

Cr1.O.P.No.17199 of 2008. In that judgment, this Court has given direction to the respondent police to provide police protection for conducting Urs festival with certain condictions viz., without flag hoisting, sprinkling of sandal paste and singing of Khawali. Further, it was made clear that the above said direction will apply only for that year's Urs festival and it cannot be quoted and relied upon as a precedent in the future in any Court proceedings. Hence, he prays for dismissal.

5.Learned Additional Public Prosecutor appearing on behalf of the respondents 1 and 2 submits that Urs festival has been conducted every year. In the year 2007, a riot was taken place, due to which, F.I.R. has been registered against both the parties and charge sheet has also been filed and the same is pending. He further submits that once the suits went against the petitioner, he cannot seek police protection by way of filing petition under Section 482 Cr.P.C. So this petition itself is not maintainable. Hence, he prays for dismissal.

6.Heard the learned counsel for the petitioner, learned Additional Public Prosecutor for the respondents 1 and 2 and learned senior counsel appearing on behalf of the third respondent and perused the materials available on record.

7.The first defence raised by the learned senior counsel appearing for the third respondent and learned Additional Public Prosecutor is that this petition under Section 482 Cr.P.C. is not maintainable. Now it is appropriate to consider the relief as sought for by the petitioner, which reads as follows:

"The petitioner therefore prays that this Hon'ble Court may be pleased to direct the respondents 1 and 2 herein to give necessary police protection during the celebration of 11th Annual Urs of the Saint Hazarath Faizee Shah Noori on 27.04.2016 and 28.04.2016 as they have been providing upto the last years 10th Annual Urs."

From the above prayer, it is clear that the relief sought for by the petitioner is only to provide police protection to conduct Urs festival. It is well settled law that the right of the party can be decided only by the Civil Court not by this Court by way of filing petitions under Section 482 Cr.P.C. and under Article 226 of the Constitution of India.

8.A perusal of the typed set of papers reveals that the father of the petitioner died on 26.08.2005. It is to be noted that the petitioner filed the application seeking police protection every year and obtained police protection for performing Urs festival.

9. Furthermore, it is pertinent to note that the third respondent has already filed the suits in O.S.No.45 of 2008 before the Sub-Court, Chidambaram for declaration that the defendants/petitioner and others are not entitled to perform Urs and any religious celebration to the corpse of their buried father in the suit property so long the dead body of Abdul Rasheed remains in the suit property and consequential injunction and in O.S.No.50 of 2008, for mandatory injunction directing the defendants to remove the corpse illegally and unlawfully buried in the suit property and on their failure to carry out the same, the Court may be pleased to implement the same through the process of Court by burying it in a notified place at the cost of the defendants. When the suits were pending, the petitioner was enjoying the benefit of getting police protection to perform Urs festival. Admittedly, on 21.12.2015, both the suits were decreed in favour of the third respondent. But even thereafter, the corpse of the petitioner's father has not been removed. The petitioner has also filed the application under Order 41 Rule 5(2) of C.P.C. for stay the execution of the decree passed in the suit. As per the said Rule, where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

10. According to the petitioner, he has filed copy application for getting decree and judgment of the suits, but he is not able to obtain certified copy of the same. In such circumstances, filing of appeal is only the continuation of the civil proceedings. Even though the civil suits were ended in favour of the third respondent and the decree is yet to be executed, the petitioner is entitled to perform Urs festival as the corpse has not been removed from the place where it was buried. Furthermore, this Court has to maintain the law and order during Urs festival, because in the year 2007, there was a riot, as the corpse of the petitioner's father finds place in the place where it was buried. As per the judgment made in W.P.No.8286 of 2009, a direction was given to the respondent police to provide police protection and it would be in force till the disposal of the civil suits. As already stated that the civil suits were ended in favour of the third respondent. So the petitioner has filed the application under Order 41 Rule 5(2) C.P.C. for stay the execution of the decree passed in the suits by restraining the respondent either by taking law in their hands or by execution of the decree through process of the Court, till the appeal is taken on file by the appellate Court. Under such circumstances, filing of appeal is the continuation of earlier civil proceedings.

11.Considering the aforestated facts and circumstances of the case, I am of the view that it is a fit case to give a direction to the respondents 1 and 2 to provide adequate police protection on 27.04.2016 and 28.04.2016 for performing Urs festival, to avoid riot and also to maintain law and order problem. It is made clear that this order will not affect the decree passed by the Civil Court, because even though decree has been passed, corpse is yet to be removed from the place where it was buried. Further, it is made clear that the petitioner can perform the Urs festival without flag hoisting, sprinkling of sandal paste and singing of Khawali.

12.Accordingly, the Criminal Original Petition is ordered.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police
Law and Order
Kattumannarkoil
Cuddalore District.
- 2.The Superintendent of Police
Cuddalore District.
- 3.The Public Prosecutor
High Court, Chennai.

+2cc to Mr.S.B.Fazluddin, Advocate, S.R.No.24625
+1cc to Mr.S.Kadarkarai, Advocate, S.R.No.24995

Crl.O.P.No.7975 of 2016

ks(CO)
srg(22/04/2016)

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