

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.6180 of 2010
and
M.P.No.1 of 2010

1.A.Periyasamy
2.Balasubramani
3.Prakash ... Petitioners

Vs

1.The State by
The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur Taluk,
Tiruppur District.
2.P.Eswaran
3.R.Muthusamy
4.A.Muthusamy
5.Chinna Muthusamy Gounder
6.The Revenue Divisional Officer,
Thirupur, Thirupur District. ... Respondents

(Impleaded the 6th respondent as per the order
of this Court dated 7.2.17 in Crl.MP.1434/17)

PRAYER: Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure, against the proceedings in
Na.Ka.4948/09/A1 dated 13.10.2009 of the Revenue Divisional
Officer, Tiruppur, Tiruppur District.

For Petitioners : Mr.P.S.Kothandaraman

For Respondents : Mr.B.Ramesh Babu (for R1 & R6)
Government Advocate (Crl.Side)

Mr.R.Krishna Prasad (for R2 & R3)

ORDER

The petitioners herein by way of this Criminal Original Petition seek to quash the impugned notice of the 6th respondent herein dated 13.10.2009 in Na.Ka.No.4948/0/A1.

2.Records disclose that the impugned notice is issued in pursuant to the registration of a FIR under Section 145 of Cr.P.C. such that calling upon the petitioners herein by arraying as 'B' party for an enquiry then scheduled to be conducted on 29.10.2009.

3.The impugned notice is further found to be issued as against the petitioners and the respondents 2 and 3 herein who remained arrayed as A party. Through the impugned notice the 6th respondent citing the above FIR in Crime No.218 of 2009 dated 30.09.2009 on the file of Avinashipalayam Police Station called upon the above parties to attend and enquiry in connection with a land dispute situated in Chinnariyapatti, Kandiyankovil Village.

4.I heard Mr.P.S.Kothandaraman, learned counsel for the petitioners, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondents 1 and 6 and Mr.R.Krishna Prasad, learned counsel for the respondents 2 and 3 and the records are perused.

5.The prime contention of the Learned Counsel for the petitioner would be that the 6th respondent cannot proceed with impugned notice as already the above land dispute is seized by the competent Civil Court.

6.Yet another contention of the Learned Counsel for the petitioner is that impugned notice is issued mechanically without application of mind and regardless of an order of injunction made in I.A.No.945 of 2009 in O.S.No.249 dated 19.10.2009.

7.On above two grounds the Learned Counsel for the petitioner seeks quashing of the impugned notice.

8.Per contra, the Learned Government Advocate appearing for the 6th respondent would submit that only on due appreciation of ground reality that there is a chance of law and order problem

existing between the petitioner and respondent 2 and 3 in connection with landed property measuring 1.78 hectares in Chinnariyapatti village the 6th respondent has chosen to issue the impugned notice in correspondence with the FIR in Crime No.28 of 2009 on the file of the Avinashpalayam Police Station.

9.It is his further contention that only satisfied upon the report of the concerned police, the impugned notice was issued accordingly he prays for dismissal of the Criminal Original Petition.

10.On careful perusal of case records, it reveals that admittedly there is a land dispute with regard to the above extent of property measuring 1.7 hectare and in this regard a suit in O.S.No.299 of 2009 on the file of learned District Munsif Court, Tiruppur came to be filed by the petitioner for declaration to declare the suit property as common cart track and consequential injunction against the respondents 2 and 3 and as well the 6th respondent from disturbing the common passage. It is relevant to note here that there is also a prayer for mandatory injunction to the sixth respondent herein to measure the above property and to carry out revenue mutation as cart track.

11.It further appears that in the said suit the petitioners also enjoyed an order of injunction to which the 6th respondent was also party respondent.

12.In the said factual background, 6th respondent has chosen to proceed with an enquiry in correspondence with the FIR registered against the petitioner and respondents 2 and 3 under section 145 of Cr.P.C.

13.It is needless to say that when already a competent Civil Court has seized the matter, it is not proper on the part of the executive authority to usurp the jurisdiction of Civil Courts by initiating proceedings under section 145 of CrPC. In this regard it would be relevant to look into the decisions report in 2001-1-LW-138 (Cr1.) and 1999 (3) CTC 641.

14.More so, the notice on hand lack material particulars and substance to show that the 6th respondent has satisfied himself from the report of the police.

15.In the case on hand 6th respondent has issued summons mechanically referring a criminal case. Hence in line with settled legal preposition made by the Hon'ble Apex Court reported in 1998-3-CTC 268, I find the impugned notice is unsustainable and devoid of merits for want of application of mind and substance to demonstrate 6th respondent's satisfaction over the report submitted by the concerned police.

16.For the forgoing reasons, this Criminal Original Petition stands allowed by quashing the impugned proceedings in Na.Ka.4948/09/A1 dated 13.10.2009 of the Revenue Divisional Officer, Tiruppur, Tiruppur District. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Revenue Divisional Officer,
Tiruppur, Tiruppur District.

+1 cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.24523

+1 cc to M/s.P.S.Kothandaraman, Advocate, S.R.No.23407

CRL.O.P.No.6180 of 2010
and
M.P.No.1 of 2010

SSM(11/01/2019)

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