



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2017

CORAM:

**THE HON'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON'BLE MR.JUSTICE P.N. PRAKASH**

**CONT.A. (MD) Nos.3 and 4 of 2014
and Sub.A. (MD) Nos.215 and 216 of 2014**

Suyambu
Deputy Superintendent of Police
Kumbakonam
Thanjavur District. ... Appellant/1st Respondent in
Cont.A. (MD) No.3 of 2014

Vijaya
Sub Inspector of Police
Taluk Police Station
Kumbakonam
Thanjavur District. ...Appellant/Petitioner in Cont.A.
(MD) No.4 of 2014
vs.

1.Thenmozhi
2.Vijaya ...Respondents in Cont.A. (MD) No.3 of 2014

1.Thenmozhi
2.Suyambu ...Respondents in Cont.A. (MD) No.4 of 2014

Contempt Appeals filed under Section 19(1) of Contempt of Courts Act, 1971 against the order dated 21.11.2014 passed by this Court in Contempt Petition (MD) No.848 of 2014.

Prayer in CONT P(MD). 848/ 2014 :

To punish the respondents herein for their deliberate and willful disobedience of the order passed by this Honourable Court in WP. (MD). No.1454/2014 dated 25.06.2014.

Prayer in WP(MD). 1454/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 2nd respondent not to interfere and harass the petitionoer in respect of the Petitioner s property situated in Re. Sy. No. 185/8, Petitioner s property situated in Re.Sy. No. 185/68, West Street, Elumichangapalayam, Tharasuram Post, Kumbakonam Taluk, Thanjavur District.

**IN CONT.A. (MD) No.3 of 2014:**

For petitioner Mr.B.Jameel Arasu
For R1 Ms.P.Kalaiyarasi Bharathi

IN CONT.A. (MD) No.4 of 2014:

For petitioner Mr.N.Dilip Kumar
For R1 Mr.M.Veilkani Raju

COMMON ORDER**(Common order of this Court was made by P.N.PRAKASH, J.)**

These Contempt Appeals are filed against the order dated 21.11.2014 passed by this Court in Contempt Petition (MD) No.848 of 2014.

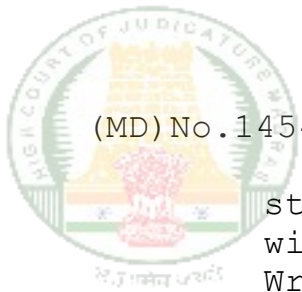
2. For the sake of convenience, the parties will be referred to by their name and designation.

3. Thenmozhi gave complaints dated 04.03.2014 and 12.06.2014 to the Inspector of Police, Taluk Police Station, Kumbakonam against one Raman and Lakshmanan in respect of some civil dispute relating to the properties between them. Since the police did not register an FIR, Thenmozhi filed Crl.O.P.(MD) No.10893 of 2014 for a direction to the police to register an FIR on her complaints. In Crl.O.P.(MD) No.10893 of 2013, a learned single Judge of this Court passed the following order on 20.06.2014:

"4. As per the judgment of the Hon'ble Supreme Court in Lalita Kumar vs. Govt. of U.P. & Others [(2013 (4) Crimes 243 (SC)], the respondent concerned may conduct a preliminary enquiry which shall not extend beyond a period of seven days from the date of receipt of a copy of this order. In conducting the preliminary enquiry, they shall put the concerned parties upon notice. At the end thereof, if any cognizable offence is made out, they shall duly register a case. In the event of effecting closure of the case upon conducting a petition enquiry, a copy of the closure report shall be forwarded to the complainant.

5. The Criminal Original Petition is disposed of with the above direction."

4. Pursuant to the aforesaid order passed by this Court, the Inspector of Police, Taluk Police Station, Kumbakonam, issued summons to Thenmozhi to appear for enquiry on 21.07.2014. Instead of reporting for enquiry, Thenmozhi made an endorsement in the summons that after consulting an Advocate, she is submitting her written explanation, which according to her should be submitted by the police to the High Court. Subsequently, Thenmozhi filed W.P.



(MD) No.1454 of 2014 with the following prayer:

"Petition praying in the circumstances stated therein and in the affidavit filed there with the High Court will be pleased to issue a Writ of mandamus or any other appropriate writ, order or direction particularly in the nature of writ directing the 2nd respondent not to interfere and harass the petitioner in respect of the petitioner's property situated in Re.Sy.No.185/8, subdivided as Re.Sy.No.185/8A and Re.Sy.No.185/68, West Street, Elumichangapalayam, Tharasuram Post, Kumbakonam Taluk, Thanjavur District."

5. In W.P.(MD) No.1454 of 2014, a learned single Judge of this Court passed the following order on 25.06.2014:

"When the matter is taken up for consideration, learned Government Advocate submitted that the respondents 1 and 2, the Police Officials are not interfering with these Civil Dispute between the petitioner and the respondents 3 to 5.

The said statement is recorded.

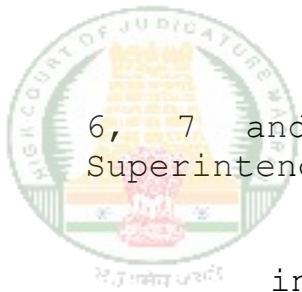
Post the matter after one week for filing counter."

6. From a reading of the above order, it appears that the learned Government Advocate has given an undertaking on behalf of the police that they will not interfere with the civil dispute between Thenmozhi on one side and Rangasamy Naidu, Raman and Lakshmanan on the other side. It is the grievance of Thenmozhi that after the order dated 25.06.2014 was passed, Suyambu, Deputy Superintendent of Police, and Vijaya, Sub-Inspector of Police, Taluk Police Station, Kumbakonam had taken sides with Raman and Lakshmanan and had allowed one Balu to put up construction in the property in dispute. Hence, Thenmozhi filed Contempt Petition (MD) No.848 of 2014 against Suyambu, Deputy Superintendent of Police and Vijaya, Sub-Inspector of Police, for alleged violation of the order dated 25.06.2014 passed in W.P.(MD) No.1454 of 2014 .

7. Notice was issued to Suyambu, Deputy Superintendent of Police and Vijaya, Sub-Inspector of Police in Contempt Petition (MD) No.848 of 2014 and they filed their counter, wherein, they have clearly stated that on the complaint of Balu, a case in Cr.No.236 of 2014 was registered against Thenmozhi and her group for offences under Sections 294(b), 448, and 506(2) IPC. Therefore, even on 25.06.2014, on which date the interim order in W.P.(MD) No.1454 of 2014 was passed by the learned single Judge, a case in Cr.No.236 of 2014 was registered against Thenmozhi and

<https://hccservicescourts.gov.in/forview> services in progress.

8. At this juncture, it may be relevant to extract paragraphs



6, 7 and 8 of the counter affidavit of Suyambu, Deputy Superintendent of Police:

"6. It is submitted that even before that in criminal case has been registered against this petitioner as Crime No.236/2014 on the complaint of Balu son of Sarangapani on 22.06.2014 itself and it is pending for investigation. Thereafter on 05.08.2014, this petitioner's father Kaliyamoorthy and Balu has lodged complaint against one another that they have been attacked by others on 31.07.2014, on receiving the complaint case has been registered as Crime No.313/2014 and 315/2015 and the same is also under investigation.

7. It is further submitted that since this Hon'ble Court has directed the police to not to interfere in the civil disputes, the police officials has not entered into that disputed site, in wake of avoiding allegations against the police parties. But as the duty cast upon these authorities, it is necessary to look into the complaints and to find out the truth. Hence the complaints of both the parties were received and the investigation is pending.

8. It is humbly submitted that the police officials has not taken any side and supported them, they have done this duties in strict compliance of law and order. More particularly the police officials has not entered into the disputed site after 25.06.2014. Hence the respondents have not committed or omitted to act, which amounts to contempt of court proceedings."

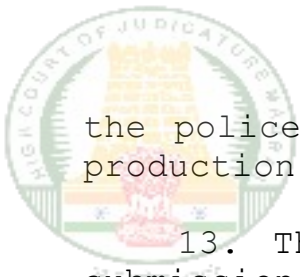
9. However, the learned single Judge of this Court convicted Suyambu, Deputy Superintendent of Police and Vijaya, Sub-Inspector of Police for civil contempt and imposed a fine of Rs.750/- on Suyambu and Rs.1,500/- on Vijaya, challenging which, these contempt appeals have been filed.

10. Heard both sides.

11. The learned counsel for Suyambu and Vijaya contended that they had not violated the order dated 25.06.2014, inasmuch as the police did not even enter the side where the alleged demolition of wall took place, because of the undertaking that has been given to the Court on 25.06.2014.

<https://hcservices.ecourts.gov.in/hcservices/>

12. Per contra, the learned counsel for Thenmozhi submitted that the appeals are liable to be dismissed, as the presence of



the policemen in the scene of occurrence has been established by production of photographs before the learned single Judge.

13. This Court gave its anxious consideration to the rival submissions.

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14. To appreciate the rival contention, it may be necessary to extract paragraphs 18 and 19 of the order dated 21.11.2014 passed by the learned single Judge convicting the contemnors:

"18. On a careful consideration of respective contentions and also this Court taking note of a very important fact that when this Court on 25/6/2014 in W.P.(MD) No.1454 of 2014 had recorded the following statement, then, it passes beyond one's comprehension as to how and why the Police had registered the case in Crime No.236 of 2014 at the instance of one Balu. Also, on 25/6/2014 in W.P.(MD) No.1454 of 2014 when the statement made on behalf of the Respondents 1 and 2 by the Learned Government Advocate was recorded by this Court, at that time, it was also not brought to the notice of this Court that in Crime No.236 of 2014 on the complaint of Balu, S/o. Sarangapani, on 22/6/2014 itself, a criminal case was registered against the Petitioner. In reality, this Court, on 28/8/2014 in Contempt Petition (MD) No.848 of 2014 in paragraph 5 had clearly stated that 'In fact, the respondent Police seeks to justify their action in supervising the demolition activities of the compound wall.'

19. Also, at this stage, this Court very pertinently points out that pending suit in O.S.No.591 of 2012 on the file of the District Munsif Court, Kumbakonam between the parties cannot be brushed aside on any score. Strictly speaking, in the matter of property/civil dispute especially where title issues/questions are involved, then, it is not within the domain of Police to enter into that arena and the prudent course of action for the Police would be to direct/advise the parties concerned to approach the competent civil forum for redressal of their grievances in the manner known to law and in accordance with law. However, in the instant case, such a direction/such an advise was not given by the Respondents 1 and 2 instead a Criminal Case came to be registered in Crime No.236 of 2014 against the Petitioner based on the complaint



of one Balu on 22/6/2014 itself."

15. We are unable to persuade ourselves to agree with the aforesaid reasoning, because unimpeachable record shows that Balu had given complaint as early as 22.06.2014, based on which, FIR was registered against Thenmozhi as stated above. Thereafter, there were cases and counter cases between the parties as set down in the counter affidavit filed by Suyambu, Deputy Superintendent of Police. It is not the case of Thenmozhi that Suyambu, Deputy Superintendent of Police and Vijaya were present. In fact, Vijaya had taken a clear plea in her counter affidavit that she had gone on maternity leave, which was not considered by the learned single Judge. In fact, from a reading of the counter affidavit filed by the police, it is limpid that they have taken a stand that in the light of the undertaking given by Government Advocate, that the police will keep away from the civil dispute between the Thenmozhi group and the Raman group, they remained silent when the construction activities were going on.

16. In our opinion, the police could not have adjudicated as to who was right, whether the Thenmozhi group or the Raman group, in the demolition and re-construction of the compound wall, as the matter was seized of by the Sub Court in O.S.No.591 of 2012. Even according to Thenmozhi, when they started getting blows, the police interfered and registered FIRs against both the parties in Cr.Nos.313 and 315 of 2014. For the failure of the police to prevent the demolition of the compound wall, they cannot be hauled up for contempt, especially when the Government Advocate has given an undertaking on behalf of the police that the police will not interfere in the civil dispute between the Thenmozhi group and the Raman group.

17. In this case, the allegation is that by standing as a spectator, the police have violated the order of the Court. In this case, the police have been convicted for not interfering in the dispute though they were present, which is indeed very strange.

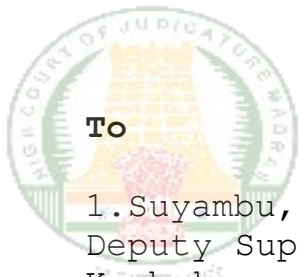
In the result, the order passed by this Court in Contempt Petition (MD) No.848 of 2014 is set aside. Accordingly, the contempt appeals are allowed. Consequently, connected sub applications are closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar



To

1.Suyambu,
Deputy Superintendent of Police,
Kumbakonam,
Thanjavur District.

2.Vijaya ,
Sub Inspector of Police,
Taluk Police Station,
Kumbakonam,
Thanjavur District.

+1cc to M/s. VEILKANI RAJ Advocate in SR. No.53864
+1cc to M/s. N.DILIP KUMAR Advocate in SR. No.53792

GMS
JS/MR/15.05.2017/7P-5C

CONT.A. (MD) Nos.3 and 4 of 2014
25.04.2017