



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

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

W.P.(MD) No.1069 of 2017

S.Shahul Hameed

... Petitioner

-vs-

1. The Superintendent of Police,
Kanyakumari District, Nagercoil.

2. The Inspector of Police
Aralvaimozhi Police Station,
Kanyakumari District

3. Aalam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus, directing the Superintendent of Police, Kanyakumari District, Nagercoil to initiate a proceeding under Section 133 of Cr.P.C. so as to curb the public nuisance that has been caused in by running a cow meat stall as well as it's attached slaughtering house at Ward No.5, Madhavalayam Main Road, Kanyakumari District in pursuance to the petitioner's representation dated 20.12.2016.

For Petitioner : Mr.R.Anand

For Respondents : Mr.T.S.Mohammed Mohideen

Addl. Govt. Pleader for R1 & R2

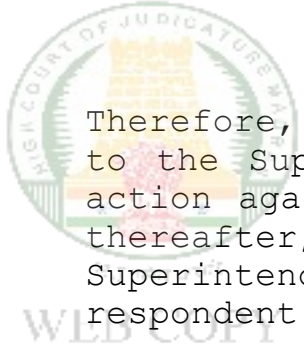
M/S.T.Lajapathi Roy for R3

O R D E R

This writ petition has been filed, seeking a direction to the Superintendent of Police, Kanyakumari District, Nagercoil to initiate proceeding under Section 133 of Cr.P.C. so as to curb the public nuisance that has been caused in by running a cow meat stall as well as it's attached slaughtering house at Ward No.5, Madhavalayam Main Road, Kanyakumari District in pursuance to the petitioner's representation dated 20.12.2016.

2. Heard the learned counsel on either side.

3. It is the case of the petitioner that the third respondent is running an authorised meat stall adjacent to the house of the petitioner and that he is also slaughtering the animals, in pursuance of his business, which is causing public nuisance.



Therefore, the petitioner gave a representation dated 20.12.2016 to the Superintendent of Police, Kanyakumari District for taking action against the third respondent under Section 133 Cr.P.C. and thereafter, filed the present writ petition for a direction to the Superintendent of Police to initiate proceeding against the third respondent under Section 133 Cr.P.C.

4. Admittedly, the petitioner is a neighbour of the third respondent. In the counter affidavit filed by the Inspector of Police, Aralvaimozhi Police Station, wherein in paragraph Nos.3 and 4, it is stated as follows:

"3.I most humbly submit that, the averments stated in para no.1 of the affidavit of the petitioner are denied as incorrect, false and misleading facts. I most humbly submit that the petitioner has filed this petition before this Honourable Court by suppressing the real and material facts. In fact, on 08.12.2016, the present petitioner has launched a complaint before the Sub Inspector of police, Aralvaimozhi Police Station against the present 3rd respondent wherein he has not mentioned anything about the slaughter house. The short gist of the complaint of the present petitioner is that, the petitioner owns 8 cents of property wherein he constructed his own house and residing for the past 6 years. The petitioner has to reach the main road from his house through a pathway which is 8 fts breadth at the frontage road side, 10 fts., at the middle and 14 fts reaching his house. The 3rd respondent is the owner of the property adjacent to the petitioner's property, facing directly to the main road. On 08.12.2016, at about 10 a.m., while the petitioner was out of his home, the 3rd respondent using a JCB machine, dugged the boundary stones of the petitioner's property and due to the same the breadth of the pathway decreased. Seeing the same, as the petitioner questioned the act of the 3rd respondent, the 3rd respondent threatened the petitioner. So stating the above, seeking legal action against the 3rd respondent for his act, the petitioner launched a complaint.

4.I most humbly submit that, the complaint of the petitioner was registered as 700/2016 in the community service register and the same was enquired by the Sub Inspector of Police, Aralvoimozhy Police Station. On enquiry, the 3rd respondent denied the allegations against him raised by the petitioner in his complaint. Subsequently the petitioner and the 3rd respondent came for compromise between themselves. As per the compromise, the 3rd respondent assured that he will continue his construction without encroaching or disturbing the pathway of the petitioner. And as the petitioner's moto is about his pathway, both of them



came for compromise and provided their statement and reported their compromise settlement and thus the above petition was closed. Further, it is pertinent to note that the petitioner has never ever complained about the slaughter house of the 3rd respondent either in his complaint or at the time of enquiry."

5. The learned counsel for the third respondent submitted that the petitioner has a valid license from the local panchayat for running the meat stall and that he is not running an unauthorised meat stall.

6. Per contra, the learned counsel for the petitioner contended that the third respondent is creating pollution, which would result in health hazard. Therefore, the learned counsel for the petitioner contended that necessary direction should be given to the police authorities to take action against the 3rd respondent under Section 133 Cr.P.C.

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

8. An action under Section 133 Cr.P.C. can be initiated only by the Executive Magistrate and not by the police authorities.

9. The learned counsel for the petitioner placed strong reliance on the judgment of the Hon'ble Supreme Court in Municipal Council, Ratlam v. Shri Vardichan and others reported in (1980) 4 SCC 162 and Kachrual Bhagirath Agrawal and others v. State of Maharashtra and others reported in 2004 CrL.J. 4634 (SC), to drive him the point that the authorities cannot turn a blind eye to a health hazard that is occurring in the location. This Court has no quarrel with the proposition of law laid down in the aforesaid decisions. However, in the aforesaid judgments, it is very clear that the local people, who were not able to withstand the public nuisance, had approached the authorities for relief under Section 133 Cr.P.C., but whereas, in this case, it is obvious that the petitioner had earlier given a complaint with regard to certain usurpation of passage by the third respondent and after such complaint was settled amicably, he has now come up with the allegations that the third respondent is causing public nuisance. Therefore, this Court cannot issue a direction on the solitary complaint of the petitioner to the authorities to act under Section 133 Cr.P.C. inasmuch as the third respondent also has a fundamental right guaranteed by the Constitution of India to carry on a lawful business with appropriate license.

10. The third respondent also brought to the notice of this Court that a suit in O.S.No.7/2017 has been filed by the third respondent against the petitioner, which is pending on the file of the District Munsif, Boothapandi, for injunction restraining the



petitioner from interfering with the peaceful conduct of the business of the third respondent.

11. In the light of the litigations between both the parties, this petition is closed and as and when there is a public outcry alleging that the third respondent is polluting the place, it is always open to the concerned revenue authorities to take action in accordance with law. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Kanyakumari District, Nagercoil.
2. The Inspector of Police
Aralvaimozhi Police Station,
Kanyakumari District

+1CC to M/S.T.lajapathi Roy, Advocate, SR.No. 14597

+1CC to the Special Government Pleader SR.No. 14722

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AM/SV MMS/28.03.2017/4P/5C