



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2017

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

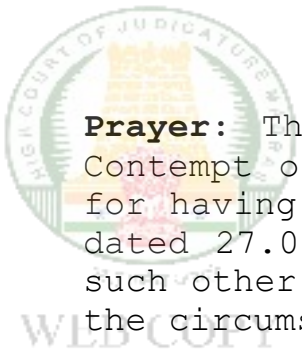
Contempt Petition (MD) No.1657 of 2016
in Crl.O.P.(MD) No.15603 of 2014 &
Sub.A.(MD) Nos.123 of 2016 & 33 of 2017

Seeni Naicker

... PETITIONER/PETITIONER/PETITIONER

-vs-

1. MR.RAJARAJAN, I.P.S.,
THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR.
2. MS.SELVI,
THE REVENUE DIVISIONAL OFFICER,
ARUPPUKKOTTAI SUB DIVISION,
VIRUDHUNAGAR DISTRICT.
3. MR.DHANAPPAUL,
THE DEPUTY SUPERINTENDENT OF POLICE,
ARUPPUKKOTTAI.
4. MR.SYED IBRAHIM SHAH,
THE TAHSILDAR, KARIAPATTI TALUK
VIRUDHUNAGAR DISTRICT.
5. MR.RAMARAJU,
THE INSPECTOR OF POLICE,
MALLANKINARU POLICE STATION,
VIRUDHUNAGAR DISTRICT.
6. PALANICHAMY,
S/O GURUSAMY NAICKER,
KOVILPATTI VILLAGE,
MALLANKINARU POST,
KARIAPATTI TK.,
VIRUDHUNAGAR DISTRICT.
7. MUTHURAMAN,
S/O. ANDI NAICKER,
MALLANKINARU POST,
KARIAPATTI TALUK,
VIRUDHUNAGAR DISTRICT. ... RESPONDENTS/CONTEMNORS/RESPONDENTS



Prayer: This contempt petition is filed under Section 11 of the Contempt of the Courts Act, 1971 praying to punish the Contemnors for having disobeyed and violated the orders of this Hon'ble Court dated 27.08.2014 passed in Crl.O.P.(MD) No.15603 of 2014 and pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in CRL OP(MD). 15603/ 2014 :

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to issue a direction to the respondents 1 to 5 to provide adequate police protection, facilitating worship and fullest participation of the people belongs to Krishanpuarm Village, Mallankinaru Post, Kariapatti Taluk, during the consecration ceremony (Kumbhabisekam) of Kalamman Temple, Kovilpatti Village, Mallankinaru Post, Scheduled to be held on 25/08/2014 and 26/08/2014 and to initiate appropriate action on petitioners representation dated 28/09/2014 and 12/08/2014.

For Petitioner	: Mr.G.Prabhu Rajadurai
	For Mr.S.Balamurugan
For R1 to R5	: Mr.S.Ramesh
	Addl. Public Prosecutor
For R6 and R7	: Mr.Veera Kathiravan, Senior Counsel
	For Mr.Elephant G.Rajendran for R6
	For Mr.C.T.Perumal for R7 (Sub.A)

Reserved on	Pronounced on
17.04.2017	27.04.2017

O R D E R

Ubiquitousness of the emotion, fear in man has made him to create Gods and provide special housings for them, called place of worship. At the end of the day, every place of worship is turning out to be a veritable battle field. The war theatre in this case is Kalamman Temple in Kovilpatti Village and the warring groups are P.Seeni Naicker on one side and Palanichamy/R6 and Muthuraman on the other side.

2. It is the case of Seeni Naicker group that Palanichamy group is not receiving the contributions, namely, Mahimai (poll-tax) from them and also not permitting them to take part in the celebrations of the Temple festivals. Seeni Naicker group filed Crl.O.P.(MD)15603 of 2014 in which, a learned Single Judge of this Court passed a detailed order on 27.08.2014, the operative portion of which reads as under:

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

"17. In view of the above position, this Court directs both the petitioner as well as the private respondents to



sort out the issues amicably and to see that all the celebrations and festivals of the temple in the village are celebrated in a conducive atmosphere. Even in future, if any celebration is to be conducted, it is made clear that the respondents should conduct only with the fullest participation of the petitioner and villagers of Krishnapuram and with their contribution. Without participation and contribution by Krishnapuram Villagers, no festival can be conducted. The Officials respondent are directed to take note of this order and take decision accordingly in future."

3. Palanichamy group took the matter on appeal to the Supreme Court in SLP(Crl.) No.7952 of 2015 and the Apex Court disposed of the same on 09.01.2015 with the following observation:

"From the orders referred to above it is manifest that the High Court has not finally adjudicated upon the right and obligations of the parties in regard to disputed temple. All that is suggested is that the parties should attempt to maintain peace and to conduct all celebrations and festivals in a peaceful atmosphere. The direction issued to the authorities to take note of the said order would only mean that the authorities would take such steps as are necessary to maintain peace. This will not in any way prevent any one of the parties claiming any right to worship or to manage the affairs of the temple from approaching the competent Civil Court for such redress as may be legally permissible.

Mr.R.Balasubramanian's however argued that any such civil action may itself be prejudiced on account of certain observations made by the High Court in the impugned order. That apprehension can in our opinion be sufficiently allayed by directing that the observation made in the body of the impugned order shall not prejudice the parties in the matter of their rights by the competent court in a properly constituted suit.

With the above observations this special leave petition is dismissed."

4. For the subsequent year, Seeni Naicker filed W.P.(MD) No.929 of 2015, which was disposed of on 28.01.2015 with the following observation:

"3. In the meanwhile, the petitioner or the members of the petitioner's village will be permitted to participate and take part in all the festival and other poojas to be conducted in the temple between 04.02.2015 to 09.02.2015. But this order will not in any way be



interpreted insofar as any civil right is concerned, no direction is issued or no other order is passed in respect of Mahimai. It is made clear that the petitioner or the members of the petitioner's village will not in any way be prevented to worship or participate in the festival."

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5. Not satisfied with the order dated 28.01.2015 passed by the learned Single Judge of this Court in W.P.(MD) No.929 of 2015, Seeni Naicker filed W.A.(MD) No.69 of 2015 before the Hon'ble Division Bench of this Court, in which final orders were passed on 04.02.2015 with the following observation:

"4. We heard the learned counsel for the parties.

5. It is stated that the method of contribution of the 'Mahimai' is by issuing of receipts by persons whoever are in the management of the temple. The apprehension expressed by the learned counsel for the private respondents is that such contribution, by the appellant group, may create specific equities in their favour which may be urged in civil proceedings. The learned Senior Counsel for the appellant, on instructions, fairly stated that he will claim no special equities arising from such contribution but, it is only for the purpose of faith of the people, this contribution is being made.

6. Therefore, we are of the view that the impugned order is liable to be modified to the extent that any contribution made by the appellant group towards 'Mahimai' would not create any special equities in their favour in case any civil proceedings are initiated. We have made the private parties conscious of the fact that if this dispute goes on ad-indefinitum, without civil proceedings being filed, there would be little option for the respondents authorities but to put their lock and seal on the temple."

6. The legal battle shifted from the High Court to the Office of the Revenue Divisional Officer (RDO), where a Peace Committee Meeting was held and an order dated 14.05.2015 was passed by the RDO, wherein he had directed that Palanichamy group should follow the dictum of the Hon'ble Division Bench in W.A.(MD) No.69 of 2015 dated 04.02.2015 and accept the Mahimai (poll-tax) amount from Seeni Naicker group and conduct the temple festival peacefully.

7. It is the contention of Palanichamy group that the RDO, Aruppukkottai misconstrued the order passed by the Division Bench in W.A.(MD) No.69 of 2015 dated 04.02.2015 and therefore, they challenged the order dated 14.05.2015 passed by the RDO in W.P.(MD) No.929 of 2015. Learned Single Judge of this Court passed final orders in the said writ petition on 08.10.2015, allowing the writ petition.



8. For deciding this contempt petition, it may be necessary to extract Paragraph No.12 of the order in W.P.(MD) No.8362 of 2015 as under:

"12. On a perusal of the entire materials available on records, it would be clear that only in the order dated 27.08.2014 in CrI.O.P.No.15603 of 2014, the learned Single Judge of this Court has observed that the respondents should conduct the temple festival only with the fullest participation of the 5th respondent herein and villagers of Krishnapuram and with their contribution. But, the said order was challenged in SLP and the Hon'ble Supreme Court has observed in the SLP that the parties have to redress their grievance with regard to their right in respect of management and affairs of the temple only before the competent Civil Court. Even in the subsequent writ petition and writ appeal also, there was no direction given to the effect that the Krishnapuram villagers can participate in the temple function by paying magimai (poll-tax). When that being so, by considering the order of the Hon'ble Supreme Court as well as the order of the Division Bench of this Court, the 2nd respondent ought to have directed the parties to approach the Civil Court to decide the right of Krishnapuram Villagers to enable them to fully participate in the temple function by paying magimai (poll-tax). But, instead of doing so, the 2nd respondent has observed in the impugned order that Kovilpatti Villagers should not conduct the festival without the fullest participation of the Krishnapuram Villagers. When there is serious dispute between the parties with regard to the management of the temple, they have to seek their remedy only before the competent Civil Court, because paying of Mahimai (poll-tax) amount will create a right on the parties with regard to the management of the temple. Even according to the writ petitioner, they have no objection for the Krishnapuram Villagers to participate in the festival of the temples as devotees; however, they are objecting only for the participation of the Krishnapuram villagers in the temple festival by paying magimai (poll-tax), which will create a right on them in the administration of the temple."

9. Seeni Naicker group have filed W.A.(MD) No.1309 of 2015 against the order dated 08.10.2015 passed in W.P.(MD) No.8362 of 2015 and the appeal is still pending before the Division Bench. While so, Seeni Naicker has filed the present contempt petition stating that Palanichamy group have violated the order dated 27.08.2014 passed in CrI.O.P.(MD) No.15603 of 2014 by refusing to ~~pay~~ ^{pay} Mahimai (poll-tax) amount from them for the conduct of the temple festival.

10. Heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioner, the learned Additional Public Prosecutor for R1 to R5 and Mr.Veera Kathiravan, learned Senior Counsel for R6 and R7.

11. Learned counsel for the petitioner strenuously contended that that the stand taken by Palanichamy group that they will not accept Mahimai (poll-tax) amount from Seeni Naicker group is a clear violation of the order dated 27.08.2014 and therefore, they are liable for contempt. He further contended that the said order has been confirmed by the Supreme Court and the appeal filed by Palanichamy group was dismissed.

12. Per contra, learned Senior Counsel appearing for R6 & R7 submitted that much water has flown under the bridge after passing of the order dated 27.08.2014 in CrI.O.P.(MD) No.15063 of 2014, directing either of the party to approach the Civil Court to establish their rights and now, Seeni Naicker group cannot plead that Palanichamy group have committed contempt of Court.

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

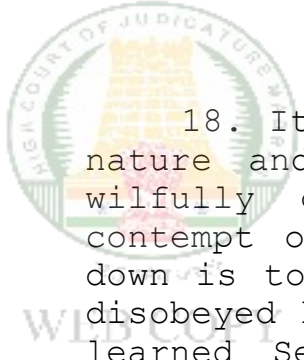
14. This is not a case of criminal contempt, but an alleged civil contempt. Section 2(b) of the Contempt of Courts reads as under:

"2(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court."

15. Every infraction of a Court order will not attract the provisions of the Contempt of Courts Act and it is for the Court to see whether the infraction was wilful.

16. Learned counsel for Seeni Niakcer contended that the order dated 27.08.2014 passed by this Court in CrI.O.P.(MD) No.15603 of 2014 cannot be diluted or interpreted in any different manner by a subsequent order, unless it is shown that the order was obtained by fraud. He submitted that when the Apex Court has upheld the order dated 27.08.2014 in CrI.O.P.(MD) No.15603 of 2014, the contention of the respondents that they are not bound to accept Mahimai (poll-tax) amount from Seeni Naicker would amount to a rank contemptuous act, warranting strict action against them.

17. At the first blush, the argument of the learned counsel for the petitioner did sound convincing, but on a close scrutiny of the facts, this Court finds certain fallacies in the contention. The expression 'wilful' (also willful) has been defined in the Oxford English Dictionary as "intentional; deliberate, stubborn and determined".



18. It is trite law that contempt action is quasi criminal in nature and unless it is shown that the alleged contemnor had wilfully disobeyed the orders of the Court, punishment for contempt of Court cannot be awarded. One of the tests laid down is to see as to how the order passed by this Court has been disobeyed by the alleged contemnor. As rightly pointed out by the learned Senior Counsel for R6 and R7, after the order dated 27.08.2014 passed by this Court in Crl.O.P.(MD) No.15063 of 2014, several events had taken place, which has, very large extent, diluted the order dated 27.08.2014. In fact, Seeni Naicker group themselves filed W.P.(MD) No.929 of 2015 and invited the order from this Court on 28.01.2015, in which learned Single Judge of this Court held that no directions can be issued in respect of Mahimai (poll-tax). This means that Seeni Naicker group themselves believed that they cannot rest their case on the order dated 27.08.2014 passed in Crl.O.P.(MD) No.15603 of 2014, otherwise, they need not have filed W.P.(MD) No.929 of 2015 and instead, they would have filed contempt petition then itself alleging that Palanichamy group have violated the order dated 27.08.2014. Aggrieved by the order dated 28.01.2015 in W.P.(MD) No.929 of 2015, Seeni Naicker group took the matter on appeal and the Division Bench in W.A.(MD) No.69 of 2015 directed Palanichamy group to accept the Mahimai (poll-tax) and contributions for the Kumbabishekam along with further direction to the parties to approach the Civil Court for settling their disputes. Palanichamy group accepted the contributions made by Seeni Naicker by issuing specific receipts to the effect that the contributions are accepted for the consequent Kumbabishekam pursuant to the order in W.A.(MD) No.69 of 2015. These words are printed in the receipt itself. After the Kumbabishekam was over, the dispute did not abate and in order to bring in peace, the RDO conducted a Peace Committee Meeting in which the order dated 14.05.2015 came to be passed. Challenging the order dated 14.05.2015, Palanichamy filed W.P.(MD) No.8362 of 2015 in which final orders were passed on 08.10.2015 setting aside the order passed by the RDO. In the said order, from a reading of Paragraph No.12, which has been extracted above, it is clear that the learned Single Judge has considered the order dated 27.08.2014 passed in Crl.O.P.(MD) No.15603 of 2014 and the order passed by the Supreme Court in the Special Leave petition and the order passed by the Single Judge in the writ petition and the order passed in the Writ Appeal and has held that when there are serious disputes between the parties with regard to the management of the temple, they have to seek their remedy only before the competent Civil Court, because paying of Mahimai (poll-tax) amount will create a right on the parties with regard to the management of the temple.

19. In view of the afore-stated finding of the learned Single Judge in W.P.(MD) No. 8362 of 2015 dated 08.10.2015, the act of Palanichamy group in refusing to accept the Mahimai (poll-tax) amount from Seeni Naicker group cannot be said to be a wilful



contemptuous act, warranting action against them under the Contempt of Courts Act, 1971.

20. In the result, this petition is devoid of merits and the same is accordingly dismissed. No costs. Consequently, connected applications are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To:

1. MR.RAJARAJAN, I.P.S.,
THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR.
2. MS.SELVI,
THE REVENUE DIVISIONAL OFFICER,
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VIRUDHUNAGAR DISTRICT.
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THE INSPECTOR OF POLICE,
MALLANGINARU POLICE STATION,
VIRUDHUNAGAR DISTRICT.

+ 1 CC TO Mr.S.BALAMURUGAN, ADVOCATE IN SR No. 54450
+ 1 CC TO Mr.ELEPHANT RAJENDRAN, ADVOCATE IN SR No. 54384

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TE/MMS-SAR-IV : 04/05/2017 : 8P/8C

PRE-DELIVERY ORDER IN
Contempt Petition (MD) No.1657 of 2016
in CrI.O.P.(MD) No.15603 of 2014 and
Sub.A.(MD) Nos.123 of 2016 & 33 of 2017
27.04.2017