

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM:

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

Crl.O.P. Nos.20495 and 20525 of 2018

1.Thangammal
2.D.Janakiraman
3.D.Saravanan

Petitioners in Crl.O.P.20495/2018

Hemalatha

Petitioner in Crl.O.P.20525/2018

Vs.

1.The State rep. by
Superintendent of Police
Kanchipuram
Kanchipuram District.

2.The Inspector of Police
H-1 Vandalur Otteri Police Station
Vandalur
Chennai 600 048.

3.The Dean of Hospital
The Chengalpattu Government Hospital
Chengalpattu
Kancheepuram District.

4.Gowri alias Esu Mary
5.Satyaraj

Respondents in Crl.O.P.20495/2018

1.Deputy Superintendent of Police
Kancheepuram District.

2.Inspector of Police
H1 Otteri Police Station
Kancheepuram.

3.Thangammal

Respondents in Crl.O.P.20525/2018

Crl.O.P.No.20495 of 2018 filed under Section 482 Cr.P.C., to direct the respondent police nos.1 and 2 to hand over the body of deceased V.Dakshinamoorthy (who died on 16.08.2018) which is in the custody of the third respondent herein and consequently to direct the respondents 1 and 2 to give necessary protection to do his last rites and rituals of the deceased late V.Dakshinamoorthy at 2/235, Anna Street, Melathur,

Somangalam Village, Sriperumbudur Taluk, Kanchipuram District Pin 600 069.

Crl.O.P.No.20525 of 2018 filed under Section 482 Cr.P.C., to direct the respondents 1 and 2 to provide adequate protection to conduct the last rites of the deceased V.Dakshinamoorthy.

In Crl.O.P.No.20495 of 2018:

For petitioners Mr.P.Balamurugan
For R1 to R3 Mr.C.Raghavan
Government Advocate (Crl.Side)

In Crl.O.P.No.20525 of 2018:

For petitioner Mr.V.J.Arul Raj
For R1 and R2 Mr.C.Raghavan
Government Advocate (Crl.Side)

C O M M O N ORDER

While Crl.O.P. No.20495 of 2018 has been preferred seeking a direction to respondents 1 and 2 to hand over the body of the deceased V.Dakshinamoorthy (who died on 16.08.2018), which is in the custody of the third respondent herein to the petitioners and consequently, to direct the respondents 1 and 2 to give necessary protection to do his last rites and rituals at 2/235, Anna Street, Melathur, Somangalam Village, Sriperumbudur Taluk, Kanchipuram District - 600 069, Crl.O.P.No.20525 of 2018 has been filed seeking a direction to the respondents 1 and 2 to provide adequate protection to conduct the last rites of the said deceased.

2. For some persons, even death does not bring happiness and Dhakshinamoorthy, the deceased in this case, is one such person, for, after his demise, his two wives claim that their deceased husband Dhakshinamoorthy's body should be buried as per their respective wishes.

3. The facts of the case, in brief, are as under:

[a] The deceased Dhakshinamoorthy was married to Thangammal/the first petitioner in Crl.O.P.No.20495 of 2018 and subsequently, he is said to have married one Gowri @ Yesumary. Thangammal is residing at Kolappakkam. The deceased Dhakshinamoorthy was living with his second wife in Kolappakkam, Chennai at the time of his death. He had a natural death on 16.08.2018 at No.92/4, Anna Nagar, Annai Therasa Street, Kolappakkam, Chennai-48, which is the residence of his second wife Gowri @ Yesumary.

[b] Information was sent to Thangammal and party about the death of Dhakshinamoorthy. They came to the house of Gowri and a quarrel ensued between Thangammal party and Gowri party as to where and how the body of the Dhakshinamoorthy should be buried. Gowri produced a registered Will dated 16.08.2018, wherein, it is stated that after Dhakshinamoorthy's death, he should be buried in Kolappakkam Village as per Christian (Roman Catholic) rites and customs, which was strongly objected to by Thangammal party, who contended that the entire Will has been fabricated, inasmuch as, the Will was registered on 16.08.2018, the date on which the said Dhakshinamoorthy died and that his thumb impression has been obtained therein, instead of getting his signature. The quarrel that began in Gowri's house, spilled over to the local police station, where both parties gave complaints, based on which, two petition enquiries were registered in CSR Nos.216 and 219 of 2018 and enquiry was conducted by the Inspector of Police. Despite three hours of mediation by the Police, the parties did not arrive at a compromise. The body started putrifying and to prevent health hazard, the police had to intervene and they took the body and kept it in the mortuary at the Government Hospital, Chenglepet.

[c] Under such circumstances, while Thangammal and her two sons are before this Court in CrI.O.P.No.20495 of 2018, Hemalatha, daughter of Dhakshinamoorthy born through Gowri, has filed CrI.O.P.No.20525 of 2018 with the above prayers. In other words, both of them are asking police protection to perform the final rites of Dhakshinamoorthy in the manner they want.

4. Heard Mr.P.Balamurugan, learned counsel for the petitioners/Thangammal and party, Mr.V.Arulraj, learned counsel for the petitioner/Hemalatha and Mr.C.Raghavan, learned Government Advocate (Criminal Side) for the State.

5. Mr.Arulraj, learned counsel placed strong reliance on the judgment of the Supreme Court in Arunkumar and another v. Shriniwas and Others [2003 (3) SCR 453], wherein, it is held as follows:

"v. It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will, unless the law prevents effect being given to it. If even there appear to be two repugnant provisions conferring successive interests and the first interest created is valid the subsequent interest cannot take effect, the Court will proceed to the farthest extent to

avoid repugnancy, so that effect could be given (as far as possible, to every testamentary intention contained in the Will".

He placed further reliance on a judgment of the Punjab and Haryana High Court in Mandeep Kaur v. State of Punjab and Others [CWP-5771-2017 dated 29.03.2017].

6. Per contra, learned counsel appearing for Thangammal and party submitted that the Will itself is under dispute, because, it has been registered on 16.08.2018 and on the same date, Dhakshinamoorthy has breathed his last and therefore, the thumb impression in the Will is not that of Dhakshinamoorthy. He further submitted that Dhakshinamoorthy has not affixed his signature, but, taking advantage of his ill health, the other party have obtained his thumb impression, even without his knowledge.

7. This Court can have no quarrel with the proposition of law propounded by the Supreme Court in Arunkumar (supra), the relevant portion of which, has been extracted above.

8. The short question that falls for consideration in this case is as to whether this Court, in exercise of its powers under Section 482 Cr.P.C., can decide such a contentious issue. Be it noted that the Will does not speak about any property and all that it speaks about, is only the manner in which the body of Dhakshinamoorthy should be disposed.

9. At this juncture, it is apropos to point out that in K.Rajamanickam and others vs. State of Tamil Nadu, Inspector General and Superintendent, Central Prison [2015 (3) MWN (Cr.) 379 (DB)] and State of Punjab vs. Davinder Pal Singh Bhullar and others [(2011) 14 SCC 770], a Division Bench of this Court and the Supreme Court, respectively, have clearly set out the powers under Section 482 Cr.P.C., and the relevant passages from Bhullar (supra) read as under:

"63. Application under Section 482 Cr.P.C. lies before the High Court against an order passed by the court subordinate to it in a pending case/proceedings. Generally, such powers are used for quashing criminal proceedings in appropriate cases. Such an application does not lie to initiate criminal proceedings or set the criminal law in motion. Inherent jurisdiction can be exercised if the order of the Subordinate Court results in the abuse of the "process" of the court and/or calls for interference

to secure the ends of justice. The use of word "process" implies that the proceedings are pending before the Subordinate Court. When reference is made to the phrase "to secure the ends of justice", it is in fact in relation to the order passed by the Subordinate Court and it cannot be understood in a general connotation of the phrase. More so, while entertaining such application the proceedings should be pending in the Subordinate Court. In case it attained finality, the inherent powers cannot be exercised. The party aggrieved may approach the appellate/revisional forum. Inherent jurisdiction can be exercised if injustice is done to a party, e.g., a clear mandatory provision of law is overlooked or where different accused in the same case are being treated differently by the Subordinate Court.

64 An inherent power is not an omnibus for opening a Pandora's box, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation.
"

10. The fact remains that the body is now in mortuary. The validity of the Will cannot be decided by this Court in a petition under Section 482 Cr.P.C. and it can be decided only in probate proceedings. This Court gave adequate time to both the parties to arrive at an amicable settlement for disposing of the body of Dakshinamoorthy. But, unfortunately, the parties have not been able to arrive at a settlement. If both the parties do not arrive at an amicable settlement, it is always open to the Revenue Authorities and the Police to dispose of the body in the manner as provided for in the case of disposal of 'unclaimed bodies'. The police need not have to keep the dead body indefinitely in the Ice Box in the mortuary at Government Hospital, Chenglepet, since the mortuary is intended mainly for storing dead bodies before and after post-mortem.

In the result, both these petitions are dismissed with a direction to the police to wait for a reasonable time of two days for the parties to arrive at a compromise. It is made clear that if the parties do not arrive at a compromise, it is open to the police to

dispose of the body, as in the manner provided in the case of disposal of 'unclaimed bodies'.

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Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1.The Superintendent of Police
Kanchipuram
Kanchipuram District.

2.The Inspector of Police
H-1 Vandalur Otteri Police Station
Vandalur
Chennai 600 048.

3.The Dean of Hospital
The Chengalpattu Government Hospital
Chengalpattu
Kancheepuram District.1.Deputy Superintendent of Police
Kancheepuram District.

4.The Public Prosecutor
High Court, Madras
Chennai 600 104

5.Deputy Superintendent of Police
Kancheepuram District.

6.Inspector of Police
H1 Ottery Police Station
Kancheepuram.

+1 CC TO MR.V.J.ARULRAJ Advocate SR.NO. 57485

+1 CC TO MR.P.BALAMURUGAN Advocate SR.NO. 57604

Cr1.O.P.Nos.20495 and 20525 of 2018

ASK(23/08/2018)