

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.12557 of 2018

1.Kumar @ Kumarraj
2.Maheswari

...Petitioners

Vs.

1.The Superintendent of Police
Erode District, Erode 637 001.

2.The Sub-Inspector of Police
Vellithiruppur Police Station
Vellithiruppur
Erode District.

3.S.Loganathan
4.Pachiammal
5.T.P.Sidheswaran
6.S.Gowtham

... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C seeking a direction to the respondents 1 and 2 to give police protection to the petitioners' life and property by considering the petitioners' complaint dated 04.01.2018.

For Petitioners : Mr.L.Mouli

For R1 and R2 : Mrs.Kritika Kamal.P

Government Advocate (Crl.Side)

For R3 to R6 : Mr.N.Manokaran

O R D E R

This criminal original petition has been filed seeking a direction to the respondents 1 and 2 to give police protection to the petitioners' life and property by considering their complaint dated 04.01.2018.

2. This case appears to have a chequered history. For the sake of convenience, the parties will be referred to by their name.

3. One T.P.Rangasamy was the original owner of the property measuring 3.98 acres comprised in R.S.Nos.287/1, 287/2 and 288/5, Patlur Village, Bhavani Taluk, Erode District. It is said that he was a bachelor and was being taken care of by his sister

Pachiammal. T.P.Rangasamy died on 19.04.2009. Pachiammal's children, viz., Loganathan, Gowthaman and Anandan contended that their maternal uncle T.P.Rangasamy had left a Will dated 11.06.2008 bequeathing all his properties to them. This was contested by the brothers and sisters of T.P.Rangasamy, viz., T.P.Venkatachalam and others who were the second class legal heirs of T.P.Rangasamy. Therefore, the second class legal heirs numbering 18 filed a suit in O.S.No.148 of 2009 for partitioning the properties of T.P.Rangasamy. In that suit, Pachiammal and her sons were shown as defendants. Pachiammal's children, viz., Loganathan, Gowthaman and Anandan filed O.S.No.145 of 2009 claiming title to the property via the Will dated 11.06.2008 by filing O.S.No.145 of 2009 against T.P.Venkatachalam and the second class legal heirs of the deceased T.P.Rangasamy. Both the suits were tried by the Additional District Judge No.4, Bhavani and by common judgment and decree dated 19.12.2016, the trial Court dismissed O.S.No.145 of 2009 and allowed O.S.No.148 of 2008 by passing a preliminary decree for partition. In other words, the trial Court rejected the Will dated 11.06.2008 proffered by Loganathan, Gowthaman and Anandan. Aggrieved by the judgments and decrees, Loganathan and his party have filed A.S.Nos.126 and 127 of 2017 before this Court and this Court has not granted any interim order of injunction in their favour. This Court has only stayed the passing of final decree in O.S.No.148 of 2009. While so, Loganathan gave a complaint dated 09.04.2017 to the Inspector of Police, Vellithiruppur Police Station, alleging that the opposite parties are trying to interfere with the possession of the property. On the complaint given by Loganathan, a petition enquiry was registered in CSR No.50 of 2017 by the police. Loganathan filed Crl.O.P.No.8314 of 2017 under Section 482 Cr.P.C. for a direction to the respondent police to give police protection to his life and property. In the said petition, he has included only T.P.Venkatachalam as one of the respondents and has left out other plaintiffs numbering 18 in O.S.No.148 of 2009. Notice appears to have been served on T.P.Venkatachalam, but, he has not chosen to enter appearance in Crl.O.P.No.8314 of 2017. This Court has passed the following order in Crl.O.P.No.8314 of 2017 on 24.07.2017:

"This Criminal Original Petition has been filed to direct the respondents to consider the complaint of the petitioner dated 09.04.2107 and to give adequate police protection to the petitioner's life and property.

2. The petitioner, who has obtained an order of interim stay, staying the operation of the judgment and decree dated 19.12.2106 made in O.S.No.148 of 2009 on the file of the learned Additional District Court, Erode District, Bavani pending disposal of the A.S.Nos. 126 and 127 of

2017 by this Court order dated 17.4.2017, had approached the second respondent seeking police protection.

3. Since the petitioner has obtained an order of stay operation of the judgment and decree in O.S.No.148 of 2009 before this Court pending disposal of A.S.No.127 of 2017 which is pending on the file of this Court, the respondent police is duty bound to extend the police protection.

4. In view of the same, there shall be a direction to the second respondent to give adequate police protection to the petitioner's life and property measuring to an extent of 3.98 Acres comprised in R.S.Nos.287/1, 287/2 and 288/5, Patlur Village, Anthiyur Taluk, considering the petitioner's complaint dated 09.04.2017 in C.S.R.No.50 of 2017 within a period of 2 days from the date of receipt of copy of this Order.

5. With the above direction, the Criminal Original Petition is allowed."

4. On the strength of this order, the police gave protection to Loganathan and party, which was found to be prejudicial to the interest of opposite parties led by one Kumar @ Kumarraj, who were claiming that they are in possession of the property and that on the strength of the orders passed by this Court, the police are trying to dispossess them. Therefore, Kumar @ Kumararaj has filed Crl.O.P.No.12557 of 2018 seeking police protection for himself and his property, in which, he has thankfully impleaded Loganathan and party as respondents 3 to 6.

5. Heard Mr.Mouli, learned counsel appearing for Kumarraj, Mrs.Kritika Kamal, P., learned Government Advocate, [Crl.Side] for the State and Mr.N.Manokaran, learned counsel for Loganathan and party.

6. Mr.N.Manokaran, learned counsel submitted that on the complaint given by Loganathan, the police have registered two FIRs. viz., Cr.No.17 of 2018 on 18.01.2018 under Sections 147, 447, 294(b) and 506(i) IPC against Venkatachalam and his children; and Cr.No.324 of 2017 on 05.12.2017 under Sections 447, 294(b) and 506(i) IPC against one Sakthivel.

7. Be that as it may, this Court posed a direct question to both the counsel as "Can the High Court, under Section 482 Cr.P.C., give police protection in matters seized of by the civil Courts?"

8. Mr.N.Manokaran placed reliance on the judgment of a learned single Judge of this Court in Radhika Sri Hari and another vs. Commissioner of Police , Coimbatore [2014 (2) CTC 695], wherein, the learned single Judge of this Court has held that police protection can be given for the implementation of a civil Court's order. One can have no two views on this reasoning. However, in this case, Loganathan and party have lost in O.S.Nos.145 and 148 of 2009 and in the appeal, viz., A.S.Nos.126 and 127 of 2017, this Court has not deemed it fit to grant any order of injunction in their favour. This Court has only stayed the passing of final decree in the partition suit in O.S.No.148 of 2009. In my humble opinion, the power under Section 482 Cr.P.C cannot be used in a case of this nature where there are disputed questions of fact and the matters are seized of by a civil Court. It would have always been open to Loganathan and party to have filed a petition under Section 151 C.P.C. in A.S.Nos.126 and 127 of 2017 seeking relief of police protection alleging that their possession is being threatened by the opposite party.

9. Mr.N.Manokaran contended that the expression in Section 482 Cr.P.C. "otherwise to secure the ends of justice" is so wide that the power under the said Section can be invoked by this Court even for ordering police protection in a case of this nature. I am unable to persuade myself to agree with this view, in the light of the categorical judgment of a Division Bench of this Court in K.Rajamanickam and others vs. State of Tamil Nadu, Inspector General and Superintendent, Central Prison [2015 (3) MWN (Cr.) 379 (DB)] which principle has been upheld by the Supreme Court in State of Punjab vs. Davinder Pal Singh Bhullar and others [(2011) 14 SCC 770], the relevant paragraphs of which read thus:

"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. (emphasis supplied).

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 Division Bench of this Court and the Supreme Court have held that the expression "otherwise to secure the ends of justice" cannot be read in isolation. Since already an order has been passed in favour of Loganathan and party in CrI.O.P.No.8314 of 2017, this Court cannot judicially review the said order in the light of Section 362 Cr.P.C. and it is always open to Kumarraj and party to approach the Supreme Court, if they are aggrieved by it.

11. As regards the prayer sought in this petition, this Court cannot grant police protection to Kumarraj and party in exercise of the powers under Section 482 Cr.P.C. At the most, this Court can only direct the respondent police to ensure that there is no law and order problem in and around the area by any party and the power of the police to interpose under Section 149 Cr.P.C. if there is violence cannot be interdicted.

With the above observation, this petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Superintendent of Police
Erode District
Erode 637 001.

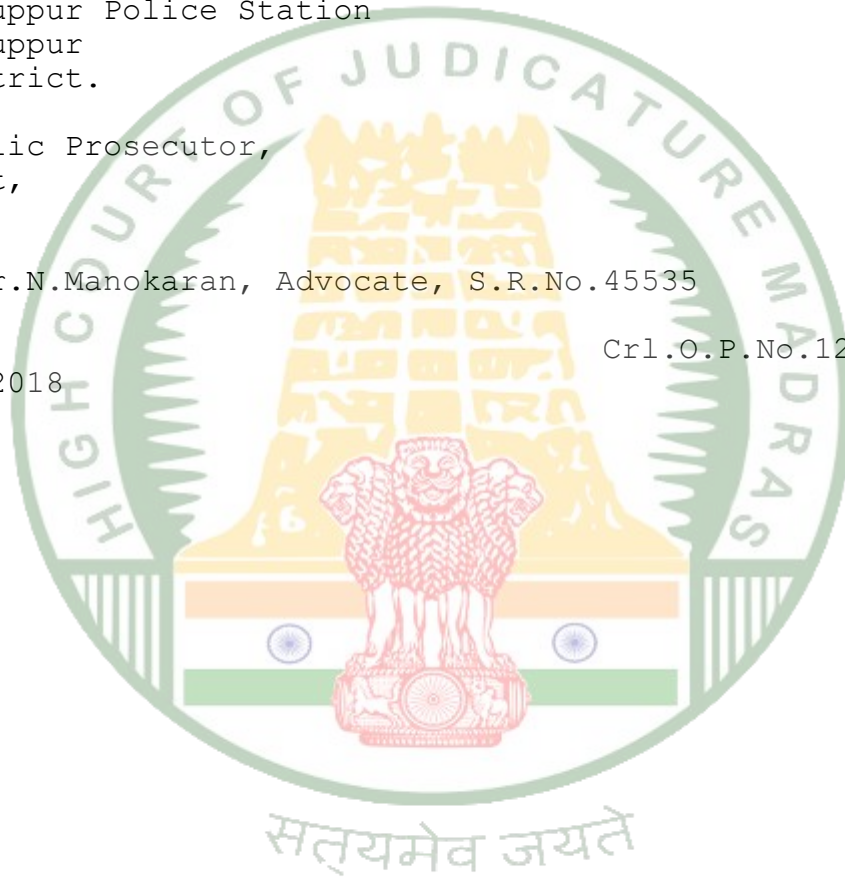
2.The Sub-Inspector of Police
Vellithiruppur Police Station
Vellithiruppur
Erode District.

3.The Public Prosecutor,
High Court,
Madras.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.45535

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BM 24/07/2018



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