

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2018

Pronounced on : 06.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.27098 of 2016

A. Velumani ... Petitioner/Accused
Vs.

1.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.

2.The Deputy Superintendent of Police,
Polur Taluk,
Tiruvannamalai District.

3.The Inspector of Police,
Kadaladi Police Station,
Tiruvannamalai District.

4.Kasinathan

5.Dhandapani

(R4 and R5 impleaded as per order dt 18/07/2018 made in
Crl OP No. 27098 in Crl MP No. 9228/2018)

...Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondents police to provide adequate police protection to the petitioner and his property situated in Survey Nos.145/7A-1.00 Ares, 290/1A 22.50 Ares, 290/1C - 12.50 Ares, 487/10A - 33.50 Ares, 487/10D - 3.50 Ares and 487/7B - 34.00 Ares in Patta No.481 and Survey No.487/10C - 4.00 Ares in Patta No.1159 of Siruvallur Village, Kalasapakkam Taluk, Tiruvannamalai District.

For Petitioner

: Mr.R. Surya Prakash

For Respondent Nos.1 to 3

: Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to direct the respondent Nos.1 to 3 to provide adequate police protection to the petitioner and his property.

2. Heard Mr.R.Surya Prakash, learned counsel for the petitioner and Mr.T.Shanmugarajeswaran, learned Government Advocate (Crl.Side) for the respondent Nos.1 to 3.

3. The respondent Nos.4 and 5 have not appeared either in person or through counsel even after receipt of the notice. Hence, after hearing the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for respondent Nos.1 to 3 and on perusing the records, the order is being passed.

4. Learned counsel for the petitioner has submitted that the petitioner herein has filed a suit in O.S.No.488 of 2004 on the file of the District Munsif, Polur, Tiruvannamalai District against his brothers viz., Manicka Udaiyar and Natesa Udaiyar for partition and in the said suit, a preliminary decree was passed on 18.11.2010 and subsequently, a final decree was passed on 18.02.2014. Thereafter, he filed an execution petition in E.P.No.50 of 2014 and he has taken possession of his share. He further submitted that the defendants in the said suit have not filed any appeal and they have joined with the respondent Nos.4 and 5 and created problem and they attempted to trespass into the petitioner's properties and hence, the petitioner has lodged a complaint before the third respondent, but the third respondent refused to receive the same and directed the petitioner to approach the Civil Court. He further submitted that the aforesaid persons frequently threatened the petitioner with dire consequences and also attempted to destroy the crops and hence the petitioner has lodged complaints on 28.08.2015 and 08.08.2016, but the respondent Nos.1 to 3 have not taken any action on the petitioner's complaints and hence he requests to direct the respondent Nos.1 to 3 to provide police protection to the petitioner and also to his properties.

5. The learned Government Advocate (Crl.Side) who is appearing for the respondent Nos.1 to 3 has submitted that since the dispute is civil in nature, the complaints filed by the petitioner have been closed. He further submitted that the petitioner was directed to approach the civil court and get appropriate orders, but the petitioner instead of approaching the civil court has filed this petition before this court and therefore, he prayed to dismiss the petition.

6. The averments made in the affidavit filed by the petitioner in support of the above petition would show that the petitioner herein has filed a suit in O.S.No.488 of 2004 on the

file of the District Munsif, Polur, Tiruvannamalai District for partition against his brothers viz., Manicka Udaiyar and Natesa Udaiyar and in the said suit, a preliminary decree was passed on 18.11.2010 and subsequently, a final decree was passed on 18.02.2014 and in pursuance of the said final decree, the petitioner has filed E.P.No.50 of 2014 and he has taken possession of his share. The petitioner has further stated in his affidavit that the defendants in that suit joined with the respondent Nos.4 and 5 and attempted to trespass into his properties. If the aforesaid persons attempted to trespass into the petitioner's properties, he would have filed a civil suit seeking injunction against those persons. The petitioner himself has admitted in the affidavit that the police also advised him to approach the civil court, but instead of filing any suit for injunction, he has filed the present petition.

7. At this juncture, it would be relevant to refer the decision in G. Meena Vs. Commissioner of Police (Sub-urban), St.Thomas Mount, Chennai and Others (2009) 2 MLJ (Crl.) 1009 wherein this court has held in paragraph No.24 of the decision as follows:

"24. In the Division Bench judgment referred to above it has been laid down that, in appropriate cases, where the Court finds that a party who had secured an order of injunction from the Court is not in a position to have its full benefit owing either to obstruction or non-cooperation of the other side, it is always open to the Court to direct the police authorities to see that its order is obeyed. Therefore, when an effective and alternative remedy is available to the petitioner to approach the Civil Court under Section 151 C.P.C and seek police protection by satisfying the Court that she is not in a position to have the full benefit of the order granted in her favour because of the obstructions or non-cooperation of the defendants, it is not open to the petitioner to approach this Court under Section 482 Cr.P.C. If a petition is filed under Section 151 C.P.C before the Civil Court, then it will be open to the civil Court to consider the objections raised by the other side and the Court can also appoint an Advocate Commissioner to find out the physical features of the properties and decide as to whether the police protection should be provided or not. Such a detailed enquiry or adjudication of the disputed questions of fact cannot be gone into by this Court while exercising jurisdiction under Section 482 Cr.P.C., Therefore, this Court is not inclined to direct respondents 1 to 3 to provide police protection to the property of the petitioner."

From the aforesaid decision, it is clear that, in appropriate cases, where the Court finds that a party who had secured an order of injunction from the Court is not in a position to have its full benefit owing either to obstruction or non-cooperation of the other side, it is always open to the court to direct the police authorities to see that its order is obeyed. Therefore, the petitioner has to file a suit for injunction restraining the persons who are making attempts to trespass into his properties and if any order is passed in his favour, then he could file an application under Section 151 C.P.C seeking police protection. Instead of doing so, he is not entitled to file a petition under Section 482 of Cr.P.C. Therefore, this petition is not maintainable and the same is liable to be dismissed.

In the result, this petition is dismissed.

gv

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
- 2.The Deputy Superintendent of Police,
Polur Taluk,
Tiruvannamalai District.
- 3.The Inspector of Police,
Kadaladi Police Station,
Tiruvannamalai District.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Rajesh Kanna, Advocate, S.R.No.62202.

Cr1.O.P.No.27098 of 2016

rrs 06/09/2018