

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.22735 of 2017
and WMP Nos.23831 of 2017 & 29787 of 2018

Mr.U.Aslam

... Petitioner

vs.

1. The Secretary to Government,
Home Department, Govt. of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The Director General of Police,
Tamil Nadu, Santhome,
Chennai - 600 004.

3. The Superintendent of Police,
Thiruvallur District,
Thiruvallur.

4. A.K.Saiyathu Ibrahim,
Secretary of Thiruvallur Mavatta Muslim
Jamaath Orunginaippu Committee,
Mariam Mathina Mosque Street,
Ponneri - 601 204,
Thiruvallur District.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1 to 3 to initiate effective steps to prevent the Organisation of the 4th respondent and such other organisations or any other body functioning in the State of Tamil Nadu from passing such Diktats in the form of resolutions or of any other nature in a manner affecting the fundamental right to the citizen to live with dignity by calling for the Social Boycott of the person and his family.

For Petitioner : Mr.S.Silambuselvam

For Respondents: Mr.E.Manoharan (for R1 to R3)
Additional Government Pleader.
No appearance (for R4)

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

On 01.10.2018, this Court passed the following order.

"Material on record discloses that there was a family dispute between the petitioner's brother and his wife. When the petitioner's brother's wife approached Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee for counselling between them and after a resolution passed on 28.12.2016, both the husband and wife were living together, in a separate house. Even thereafter, dispute continued, on 07.01.2017, petitioner's brother again sought for intervention by the committee.

2. Subsequently, on 13.03.2017, Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Thiruvallur District, gave a Diktat that if the petitioner's brother refuses to live with his wife, then the fourth respondent committee will inform all the Jamaaths and local mosques that No Objection Certificate will not be issued to other members of the petitioner's family, for marriage.

3. Vide letter dated 13.03.2017, Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Tiruvallur District, has communicated its decision to the Chairman, Secretaries of all the mosques. The abovesaid letter addressed to Mr.U.Imtiaz, elder brother of the petitioner, is extracted hereunder:-

"Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Tiruvallur District,

सत्यमेव जयते
13/3/2017

To

U.Imtiaz
S/O Y.Ubayadulla
33, Sivan Koil Street,
Ponneri
Assalamu Alaikum,

Regarding the family dispute between you and your wife. We, the committee had investigation twice and you had agreed to live with your wife. The then after you had sent a letter dated 29/12/16 by post to the committee that you can't live with her.

However, your wife had agreed to live

with you and mentioned the same in the letter submitted to committee. Therefore, committee had gathered on 27/1/2017 to seek your final decision to live with your wife and the same have been communicated by post but we haven't received any response from you.

Therefore, we the members of the committee had gathered on 8/3/2017 and arrived to a decision to provide you a final opportunity, if you do not respond then as per the 4th resolution passed by the committee 'No Objection Certificate' should not be issued to you and your brothers and the resolution has to be cascaded to all jamath throughout tiruvallur district.

Hence, you are advised to respond within three days upon receiving this letter.

Your faithfully

E.M.Mohameed Ali
Secretary (Seal & Sign)"

4. Letter from Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Tiruvallur District, dated 05.04.2017, addressed to the Chairman and Secretaries of all the mosques, is extracted hereunder:-

"Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Tiruvallur District,

5/4/2017

To

Chairman, Secretary of the all mosque

Assalamu Alaikum,

As per the resolution passed by 'Tiruvallur Mavata Anaithu Muslim Orunginaippu Committee on 8.3.2017 Wednesday 10 A.M. Mr.Imtiaz S/O Y. Ubayadulla residing at 33, Sivan Koil Street, ponneri had married I.Rahmath D/O Tajudeen residing at Redhills and pronounced talaq within one year and couple of months. Mr.Imtiaz had likewise had married couple of poor girls and pronounced talaq by offering ransom and threatened them. His mother and his brothers namely U.Mustaq M.C.A and U.Aslam MBA., B.L., were supporting him in his above mentioned acts. Tiruvallur Mavata Jamath committee had called for several sittings and investigations have been carried on but they have denied agreeing to our orders. Therefore,

we hereby inform all mosque across Thiruvallur district to not to issue No Objection Certificate (NOC) for marriage for all the three respectively.

E.M.Mohammed Ali

Secretary (Seal and Sign)"

5. Petitioner has submitted that, a complaint dated 01.05.2017, was given before the Inspector of Police, Ponneri, Tiruvallur District, requesting to take action against the Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Tiruvallur District/4th respondent herein. No action has been taken. Hence, the present writ petition has been filed for a Mandamus, directing the respondents 1 to 3, to prevent the Organization, the 4th respondent herein, from functioning and issuing Diktats, in the form of resolutions or any other nature, in a manner affecting the fundamental rights of the petitioner.

6. Supporting the prayer sought for, reliance has also been made to a decision of the Hon'ble First Bench of this Court, in W.P.No.33059 of 2016, dated 19.01.2017, by which activity of one such Makka Masjid Shariat Council, has been stopped by the police, and taken note of by the Hon'ble First Bench of this Court.

7. Added further, Mr.S.Silambuselvan, learned counsel appearing for the petitioner, submitted that the marriage of his younger brother Mr.U.Mustaq Ahmed, is scheduled on 03.10.2018. Thiruvallur Mavatta Anaithu Muslim Jamaath Orunginaippu Committee, Tiruvallur District/4th respondent herein, has already issued Diktat, and threatened that the marriage should not be performed. Hence, he is seeking police assistance. A Complaint dated 17.09.2018, has also been preferred by Mr.U.Mustaq Ahmed/petitioner's brother, to the Inspector of Police, Thirupalaivanam Police Station, Thiruvallur District, for taking action against the illegal activities of the 4th respondent herein. Said complaint is appears to have been acknowledged.

8. As per the law governing of Muslims, marriage is a contract, between two parties and a third party cannot give any direction. Whatever be the practice followed, in the religion, unless and until, it has the force of law, no individual/committee can stop a valid marriage. Apprehension has been made. Complaint dated 17.09.2018, has been acknowledged by the Inspector of Police, Thirupalaivanam Police Station, Thiruvallur District.

9. We direct the Inspector of Police, Thirupalaivanam Police Station, Thiruvallur District, to look into the complaint dated 17.09.2018, given by

Mr.U.Mustaq Ahmed/petitioner's brother.
Mr.E.Manoharan, learned Additional Government Pleader,
is directed to communicate, the order passed by this
Court, to the Inspector of Police, Thirupalaivanam
Police Station, and the Superintendent of Police,
Thiruvallur District.

10. Post on 09.10.2018."

2. Today, when the matter was taken up, despite notice, 4th respondent has chosen not to appear in the Court. Further, we were informed that the marriage of the brother of the petitioner was conducted peacefully.

3. Some people are running private Courts for settlement of disputes. In fact, when a similar dispute came before this Court, vide order dated 19.01.2017, in W.P.No.33059 of 2016, this Court, observed as under.

"2.It is an admitted position that the petitioner himself had approached the fourth respondent on account of a matrimonial dispute. There is controversy as to what transpired therein, as there are allegations and counter allegations in this behalf. But, we are not required to go into that issue as that would be a matter to be examined by an appropriate Court.

3.The substantive allegation is that the fourth respondent seeks to function in the campus of the Makka Masjid with the fifth respondent as its General Secretary. It is the allegation of the petitioner that the fifth respondent and some advocates and other persons have jointly been using the mosque premises and sought to create an impression in the mind of the Muslim community that the fourth respondent is an organisation which is carrying on judicial function as per Islamic Shariat Law and proclaiming it as an alternative to the judicial system. The persons from the community are encouraged to approach the forum by sending ''summon'' and also phone calls made to the opposite party and then, they are compelled to appear under an alleged religious edict. The fourth respondent forum is, thus, being alleged to be a Kangaroo Court and in that process, it is alleged that even the petitioner and his family members were misled. The culmination of the proceedings is stated to be in the form of an order akin to a judicial forum and those documents are then misused for other purposes."

4. In the light of the allegations made by the complainant, respondents 2 and 3 are directed to initiate an enquiry on the basis of the representation made by the petitioner and take suitable action, in accordance with law. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

5. With the above directions, the writ petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars/gsp

To

1. The Secretary to Government,
Home Department, Govt. of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The Director General of Police,
Tamil Nadu, Santhome,
Chennai - 600 004.

3. The Superintendent of Police,
Thiruvallur District,
Thiruvallur.

+lcc to Mr.S.Silambuselvan, Advocate, S.R.No.74993

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CNR (CO)
GSP (20/12/2018)

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