

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3220 OF 2019

Melwyn Isidore Fernandes & Ors. .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

WRIT PETITION NO. 3238 OF 2019

Justin Jesiah Rayan .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

...

Mr. S.M. Sabrad for the petitioners.

Ms. A. S. Pai, A.P.P. for the State.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 17th JULY 2019

P.C:-

1. Heard learned counsel for the petitioners and learned APP for the State.

2. Mr. Sabrad, learned counsel for the petitioners at the

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outset seeks leave to amend the cause title of Writ Petition No.3220 of 2019 to implead four more persons as petitioners against whom chapter case proceedings are initiated.

3. Since the petition is at the stage of admission, leave, as prayed for, is granted. Necessary amendments shall be carried out forthwith.

4. The petitioners in both these petitions by invoking jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure seek to challenge the chapter case proceedings initiated by Respondent No.2 under Section 107 read with Sections 111 and 113 of the Code of Criminal Procedure. It is the case of the petitioners that the said proceedings are initiated merely on the basis of registration of C.R. No.I-88 of 2018 by Vartak Nagar Police Station, Thane, under Sections 320, 321, 322 of the Maharashtra Municipal Corporations Act, 1949 and Section 188 of the IPC read with Section 35(1) and 33 of the Maharashtra Police Act, 1951 against 14 members of the Trust viz. St. John The Baptist Church (**“the said Trust”**). Though the offence is registered against 14 persons, chapter case proceedings are initiated only against six members.

5. Learned A.P.P. vehemently opposes the petitions. She submitted that contrary to the provisions of the Maharashtra

Municipal Corporations Act, 1949, the members of the said Trust including the petitioners, buried the dead body of A. Jesiah in an open plot of R-zone of St. John Baptist Trust bearing Survey No.189/2/A which is adjacent to Our Lady of Mercy Church, Pokhran Road No.2, Thane (West). It is the further contention of learned A.P.P. that this land was reserved for residential purpose and without prior permission of the Municipal Corporation, the petitioners could not have buried the dead body of Jesiah. Learned A.P.P. submits that despite registration of the FIR, an attempt was made to bury dead body of another person in the said land by the members of the said Trust including the petitioners. This statement was, however, disputed by learned counsel for the petitioners. The members of the said Trust have thus approached this Court by way of Writ Petition No.1687 of 2019 for permission to bury the dead bodies in the said land. On 1st April, 2019, this court granted permission to the petitioners to approach the Municipal Corporation under Section 320 of the Maharashtra Municipal Corporation Act.

6. It is an admitted fact that on 06th May, 2019, the Commissioner of Thane Municipal Corporation has passed an order of status quo. Learned A.P.P. alleged that despite this order of status quo, the members of the said Trust again attempted to bury the dead body of another person in the said land, and, therefore, the chapter case proceedings are initiated

against the petitioners in order to prevent the breach of peace.

7. Mr. Sabrad, learned counsel for the petitioners placed on record the Affidavits cum Undertakings of the petitioners in the above petitions, all dated 17th July, 2019. The petitioners, in these Undertakings, have acknowledged that the Commissioner of Municipal Corporation has directed them to maintain status quo pending hearing of their Application under Section 320 of the Maharashtra Municipal Corporation Act. The petitioners have further undertaken that they will not bury any corpse in the open land owned by the said St. John The Baptist Church, which is in the residential area, until the orders that may be passed by the Commissioner of the Thane Municipal Corporation. The undertakings of the petitioners are accepted. The petitioners are present in the court. They agree to abide by the undertakings referred to above.

8. In the light of the above undertakings, learned A.P.P. having taken instructions from the A.C.P. Mr. Pankaj Shirsat, Vartak Nagar Police Station makes a statement that the chapter case proceedings initiated against the petitioners shall be withdrawn with immediate effect. The statement is accepted.

9. We, however, grant liberty to the Varatak Nagar Police Station to take action including the chapter case proceedings against the members of the said Trust if there is any breach of the provisions of the Maharashtra Municipal Corporation Act or

breach of any undertaking given to this Court.

10. Subject to the above, both the writ petitions stand disposed of.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)