

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P.No. 6829 of 2019

ABF Abdullah Faizee

... Petitioner

Vs.

1. The Inspector of Police,
Law and Order,
Kattumannarkudi,
Cuddalore District.

2. The Superintendent of Police,
Cuddalore,
Cuddalore District.

3. M.A.Fathaudheen

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the respondents 1 and 2 to provide police protection to perform Urs festival in the burial place of Late Hazrat Faizee Shah Noori.

For Petitioner : Mr. Selvaraj
For M.Venkadesan

For Respondents

For R1 & R2 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R3 : Mr.T.R.Rajagopalan
Senior Counsel
For Mrs.AB.Reehana Begum

ORDER

This petition has been filed to direct the respondents 1 and 2 to provide police protection to perform Urs festival in the burial place of Late Hazrat Faizee Shah Noori.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the son of late Harzrat Faizee Shah Noori, who died on 26.08.2005. His mortal was buried in the property owned by him. Thereafter in the year, 2006, the petitioner conducted Urs festival of his father. During the year 2007, there was an objection by a group of persons under the leadership of the third respondent herein, for the reason that his father body was buried without obtaining any due license from the town Panchayat. Therefore, for the festival of Urs for the next year, the petitioner sought police protection before this Court in Crl.O.P.No.22570 of 2007 and the police protection was granted for the festival

performed between 03.08.2007 and 05.08.2007. Thereafter, the third respondent along with others filed two suits in O.S.No.50 of 2008 and O.S.No.45 of 2008, before the Sub Court, Chidambaram to remove the dead body of the petitioner's father and also seeking declaration that the petitioner and others are not entitled to perform Urs and other religious function in the disputed property. The said suits are decreed by the judgment and decree dated 21.12.2016, and the petitioner filed an appeal suits as against the said decree and the same were also dismissed.

2.1. In the mean while, again the petitioner approached this Court in Crl.O.P.No.7975 of 2016 for police protection to conduct Urs festival between 27.04.2016 to 28.04.2016. This Court allowed the said petition and held that so long as the mortal remains of Late Hazrat Faizee Shah Noori remain buried in the property celebration of Urs festival should be permitted. The relevant portion of the order in Crl.O.P.No.7975 of 2016, dated 21.04.2016, reads as follows :-

"10.....Even though the civil suits were ended in favour of the third respondent and the decree is yet to be executed, the petitioner is entitled to perform Urs festival as the corpse has not been removed from the place where it was buried. Furthermore, this Court has to maintain the law and order during Urs festival, because in the year 2007, there was a riot, as the corpse of the petitioner's father finds place in the place where it was buried. As per the judgment made in W.P.No.8286 of 2009, a direction was given to the respondent police to provide police protection and it would be in force till the disposal of the civil suits. As already stated that the civil suits were ended in favour of the third respondent. So the petitioner has filed the application under Order 41 Rule 5 (2)C.P.C. for stay the execution of the decree passed in the suits by restraining the respondent either by taking law in their hands or by execution of the decree through process of the Court, till the appeal is taken on file by the appellate Court. Under such circumstances, filing of appeal is the continuation of earlier civil proceedings.

11.Considering the afore stated facts and circumstances of the case, I am of the view that it is a fit case to give a direction to the respondents 1 and 2 to provide adequate police

protection on 27.04.2016 and 28.04.2016 for performing Urs festival, to avoid riot and also to maintain law and order problem. It is made clear that this order will not affect the decree passed by the Civil Court, because even though decree has been passed, corpse is yet to be removed from the place where it was buried. Further, it is made clear that the petitioner can perform the Urs festival without flag hoisting, sprinkling of sandal paste and singing of Khawali."

Therefore, the learned counsel appearing for the petitioner prays to allow this petition.

3. The learned Senior Counsel appearing for the third respondent filed counter and submitted that this petition filed under Section 482 of Cr.P.C. is not at all maintainable, since there is a valid decree in O.S.No.45 of 2008, declaring that the petitioner and others are not entitled to perform Urs or other religious to the corpse of the buried body of the petitioner's father in the suit property and also permanent injunction to perform Urs in the suit property. When the decree is in force, it is not proper to direct the police to provide adequate protection to celebrate the function. Now the suits decreed in favour of the third respondent and the appeal suits also ended in favour of the third respondent. Therefore, the petition itself is not maintainable.

4. The learned Additional Public Prosecutor submitted that the representation submitted by the petitioner is pending with the first respondent for consideration.

5. Heard Mr.Selvaraj, learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents 1 & 2 and Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the third respondent.

6. Admittedly, even now, the corpse of the petitioner's father is not yet removed from the place, where it was buried. The civil Court decree is not executed till date, since the appeal suits in A.S.Nos.40 and 41 of 2016 on the file of the learned Additional District & Session Judge, Chidambaram were dismissed by a judgement dated 29.01.2019, only. It is also seen that the petitioner is preparing to prefer second appeal as against the above judgment before this Court. Now the petitioner and others seek police protection by their representation to conduct 14th Urs festival between 27.03.2019 to 29.03.2019 and the same is under consideration before the first respondent.

7. Considering the above facts and circumstances, the first respondent is directed to provide police protection to conduct 14th Urs festival between 27.03.2019 and 29.03.2019 in the burial place of the petitioner's father viz., Hazrat Faizee Shah Noori, on payment of necessary charges forthwith. The first respondent is also directed to ensure that the law and order is intact in the place of festival and if any untoward incident happens, the first respondent is at liberty to proceed in accordance with law.

8. With the above directions, this Criminal Original Petition stands allowed.

Sd/--

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Police,
Law and Order,
Kattumannarkudi,
Cuddalore District.
2. The Superintendent of Police,
Cuddalore,
Cuddalore District.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.M.Venkadeshnan , Advocate SR.No. 28514

+1cc to Mrs.AB.Reehana Begum, Advocate SR.No. 28708

CRL.O.P.No. 6829 of 2019

A.SK(26/03/2019)

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