

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.11112 of 2019
and
Crl MP No.7335 of 2019

D.Desilva Daniel Raj .. Petitioner
.Vs.

1.State by
Inspector of Police,
(Law and Order)
C-1, Flower Bazaar Police Station,
Flower Bazaar,
Chennai-600 001.

2.S.Govindaraj ..Respondents
[R 2 impleaded as per Order in
Crl.MP.No.7335/2019 in Crl.OP.No.1112/2019
dt.12.06.2019].

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the respondent to provide police protection to the petitioner at the time of opening of the retail flower vending shop under the name and style of P.D.Retail Flower shop situated at No.6/1, Badrian Street, Chennai 600 001 pursuant to the complaint of the petitioner dated 29.03.2019.

For Petitioner : Mr.S.Sadasaram
for Mr.K.Shivakumar

For R 1 : Mr.C.Raghavan,
Government Advocate

For R 2 : Mrs.Chitra Sampath, Senior Counsel
for Mr.K.Premkumar

ORDER

This Criminal Original Petition has been filed seeking for Police Protection to the petitioner to run the flower vending shop under the name and style of P.D.Retail Flower Shop.

2.The petitioner approached this Court seeking for Police protection mainly on the ground that the petitioner has obtained favorable orders before this Court in the writ petition and writ appeal wherein, the authorities were directed to remove the seal and permit the retail vendors to do their business and inspite of the said order, the petitioner was prevented from running the flower vending shop. When the petition was filed, except for the respondent Police, no one else was a party to the proceedings and the case itself was projected, as if, the petitioner inspite of getting favourable orders before this Court, is being prevented from running the retail flower vending shop.

3.It will be useful to extract the order passed by this Court on 12.06.2019.

"2. The learned counsel for the petitioner submitted that the petitioner is running a retail flower shop. An attempt was made by the CMDA and Corporation of Chennai to lock and seal all the shops on the ground that they were doing whole sale business. Hence, the petitioner along with similarly placed persons approached this Court, challenging the action of the authorities. Initially, the Writ Petitions were dismissed and as against the same, batch of Writ Appeals were filed and the petitioner also filed W.A.No.2361 of 2018. Pursuant to the directions given by the Division Bench, the authorities were directed to remove the seal and permit the retail vendors to do their business.

3. Pursuant to the above said order, when the petitioner attempted to open the shop, in order to do their business, the second respondent, who has been impleaded in this case, is said to be preventing the petitioner from opening the shop. Therefore, the petitioner gave a complaint to the respondent police on 29.032019, seeking for police protection. Since no action has been taken on the complaint, the present petition has been filed before this Court.

4. Heard, the learned Additional Public Prosecutor appearing on behalf of the respondent.

5.There shall be a direction to the respondent police, to immediately act upon the compliant given by the petitioner and call the parties for an enquiry. Since the petitioner is already running the retail shop and has

also obtained an order before this Court in

W.A.No.2361 of 2018, he cannot be prevented from running his retail shop and the rival parties have to necessarily workout their remedy only before the Competent Court and they cannot prevent the petitioner from running the shop. If, in spite of the instructions, there is any disruption by the rival party, action shall be initiated in accordance with law".

4.After the above order was passed, the 2nd respondent approached this Court and contended that the petitioner has intentionally concealed various vital facts and that there is already an inter se dispute between the parties. The 2nd respondent also submitted that the order passed by this Court on 12.06.2019, has to be recalled since it has been obtained by suppression of facts and by playing fraud on the Court. The impleading petition was allowed by an order dated 12.06.2019, and the 2nd respondent was made a party to the proceedings.

5.This Court again heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent and passed the following order on 02.07.2019, and it is extracted hereunder:

"2. This Court had passed an order dated 12.06.2019, without realizing the fact that there is an inter se dispute between the petitioner and the 2nd respondent. The name of the 2nd respondent was neither shown in the cause title nor was shown in the cause list. Therefore, this Court proceeded to pass an order giving certain direction to the respondent police to give police protection.

3.Today the matter is being posted under the caption "for being mentioned" and the counsel for the 2nd respondent submitted that the orders have been passed without giving an opportunity to the 2nd respondent. He further brought to the notice of this Court, the Civil proceedings pending between the parties in O.S.No.2879 of 2015. If this Court was made aware of the pending civil proceedings between the parties, this Court would not have given a direction without hearing the 2nd respondent. Now it is being informed to the Court that the respondent police have opened the shop on Sunday in view of the order passed by this Court on 12.06.2019.

4.In view of the above, the order passed on 12.06.2019 is hereby recalled and the respondent police is directed to close the shop and

maintain the status quo, till final orders are passed in this Criminal Original Petition".

6.This case was finally heard today.

7.The learned counsel for the petitioner submitted that the 2nd respondent does not have any right over the shop and the 2nd respondent did not even move this Court after the shop was sealed and it was only the petitioner who had obtained favourable orders before this Court both in the writ petition as well as in writ appeal. The learned counsel further submitted that even in the suit filed by the 2nd respondent in O.S.No.2879 of 2015, the petitioner is not shown as a defendant. In this suit, the 2nd respondent has obtained an interim order of Status quo in I.A.No.7506 of 2015, by an order dated 18.01.2017. This order does not in any way bind the petitioner, and therefore the original order passed by this Court granting police protection to the petitioner must be restored.

8.Mrs.Chithra Sampath, learned Senior Counsel appearing on behalf of the 2nd respondent submitted that the petition is liable to be dismissed on the ground of suppression of facts and on the ground that the petitioner has approached this Court with unclean hands. The learned Senior Counsel in order to substantiate her submissions brought to the notice of this Court the fact that the petitioner became a subtenant under one K.Ravikumar for the shop in the year 2003, and when K. Ravikumar attempted to illegally evict the 2nd respondent, the 2nd respondent had filed a suit and had also obtained an order of interim injunction against K.Ravikumar. Subsequently, one Balan filed a suit claiming right over the property to an extent of 36 sq.ft., against the CMDA and Corporation of Chennai, in O.S.No.6172 of 2012. The very same person again instituted a suit in O.S.No.2888 of 2015, against one Vasudevan, who had nothing to do with the property and this time the extent of the property was shown to be 600 sq.ft. The learned Senior Counsel further submitted that the 2nd respondent in the mean time had filed a police complaint against the above said Ravi Kumar and others who attempted to illegally evict the 2nd respondent and had stolen away the money from the 2nd respondent and an FIR came to be registered in Cr.No.999/2015, and the investigation is pending. The 2nd respondent had also filed a suit in O.S.No.2879 of 2015 against 4 persons and the father of the petitioner is the 3rd defendant in the said suit. It was in this suit, the 2nd respondent had obtained an order of Status quo on 18.01.2017, and this order was also subsequently made absolute.

9.The learned Senior Counsel submitted that in all these proceedings, the very same counsel who is now representing the petitioner was also representing the above said Balan and Dhanraj, who is the father of the present petitioner.

Therefore, the learned Senior Counsel submitted that the counsel was aware about all the earlier proceedings between the parties and inspite of the same had concealed the entire fact while filing the present petition. Therefore, the learned Senior Counsel submitted that the petition itself is an abuse of process of Court and a clear attempt has been made to obtain orders behind the back of the 2nd respondent and infact after the orders were obtained from this Court, the shop was closed and sealed by the respondent police.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.To start with, the petitioner projected a case before this Court, as if, the petitioner had a right to run the flower vending shop and was authorised by the concerned authorities and that he had also obtained orders before this Court in the writ petition and in writ appeal filed before this Court. This is apparent from the earlier order that was passed by this Court and which has been extracted supra. The petitioner consciously did not bring to the notice of this Court about the related proceedings and the fact that the 2nd respondent had already filed a suit and obtained an order of Status quo against the father of the petitioner. It is also a matter of fact that the same counsel who is appearing for the

father of the petitioner in the suit, is also appearing in this case on behalf of the petitioner. Therefore, the petitioner cannot feign ignorance of the civil proceedings that have already been initiated by the 2nd respondent.

12.The scope for granting police protection particularly for a property, is very limited and normally this Court will not grant such a protection unless the facts of the case demands such an order. The law on this issue has been settled by this Court in G. Meena .Vs. Commissioner of Police (Sub-urban), St.Thomas Mount, Chennai and Others reported in (2009) 2 MLJ (Crl) 1009. This Court in exercise of its jurisdiction under Section 482 of Cr.P.C., should never venture into deciding the civil rights of the parties and it should be done only before a competent Civil Court. If the notice of this Court had been drawn to the fact that the 2nd respondent had already approached a competent Civil Court and is agitating his rights with regard to the very same shop in which the father of the petitioner is a defendant, this Court would not have entertained this petition and it would have relegated the petitioner to the Civil Court and it would have given an opportunity to the petitioner to agitate his rights before the Civil Court. Unfortunately, the petitioner has consciously chosen to conceal this fact.

13.This Court does not want to render any findings on the various suits instituted between the parties and the inter se rights claimed by the parties. In the considered view of this Court, the petitioner has approached this Court with unclean hands by suppressing the material facts and has infact obtained an order from this Court even without adding the 2nd respondent as a party, inspite of knowing the fact that the 2nd respondent is also claiming a right in the flower vending shop. The learned counsel who is appearing on behalf of the petitioner is the same counsel who is appearing on behalf of the father of the petitioner in the civil suit, and therefore the counsel could have atleast brought to the notice of this Court about the suit filed by the 2nd respondent for the very same shop. This was also not done in this case.

14.While the writ petition and writ appeal was filed by the petitioner before this Court, it is not known under what right the petitioner had filed the same and the 2nd respondent was completely kept in dark about those proceedings. The order obtained by the petitioner in the writ petition and writ appeal does not bind the 2nd respondent since the 2nd respondent was not a party in the writ petition and writ appeal. Therefore, the petitioner cannot seek for a police protection only based on the orders passed in the writ petition and writ appeal. The inter se dispute between the parties regarding the right to run the shop is very much at large before the competent Civil Court.

15.This Court is of the considered view that the relief as sought for by the petitioner cannot be granted by this Court for the simple reason that the petitioner has not approached this Court with clean hands. The respondent police will not have any role to play in a dispute of this nature and the parties will have to only go before the appropriate Civil Court and agitate their rights. The respondent Police is directed to open the shop forthwith and is further directed not to interfere with the dispute between the parties. The 2nd respondent has already obtained an order before the competent Civil Court in I.A.No.7506 of 2015, and it is stated that an appeal is pending against this order. If the 2nd respondent on the strength of this order had been running the flower vending shop, he cannot be prevented from continuing to run the shop, till the final disposal of the case. Therefore, whatever Status quo was prevailing as on the date on which the Order was passed by the VI Assistant City Civil Court, Chennai, on 18.01.2017, has to be maintained and the same cannot be disturbed by virtue of any police protection being granted in favour of the petitioner.

In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Inspector of Police,
(Law and Order)
C-1, Flower Bazaar Police Station,
Flower Bazaar,
Chennai-600 001.

2.VI Assistant City Civil Court,
Chennai.

3.Public Prosecutor,
High Court, Madras.

+2cc to Mr.K.Shiva Kumar, Advocate, S.R.No. 65257

+2cc to Mr.G.Prem Kumar, Advocate, S.R.No. 65419

Cr1.OP No.11112 of 2019

NRL(CO)
GN(13/08/2019)