

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE V.PARTHIBAN
Crl.R.C.No.1611 of 2017
and
Crl.M.P.No.16574 of 2017

1.Rajaram

2.Pitchaipillai

3.Venkatachalam

4.Periyasamy

5.Chinnasamy

6.Royappan

7.Arumugam

8.Thangarasu

9.Shankar

10.Chinnaswamy

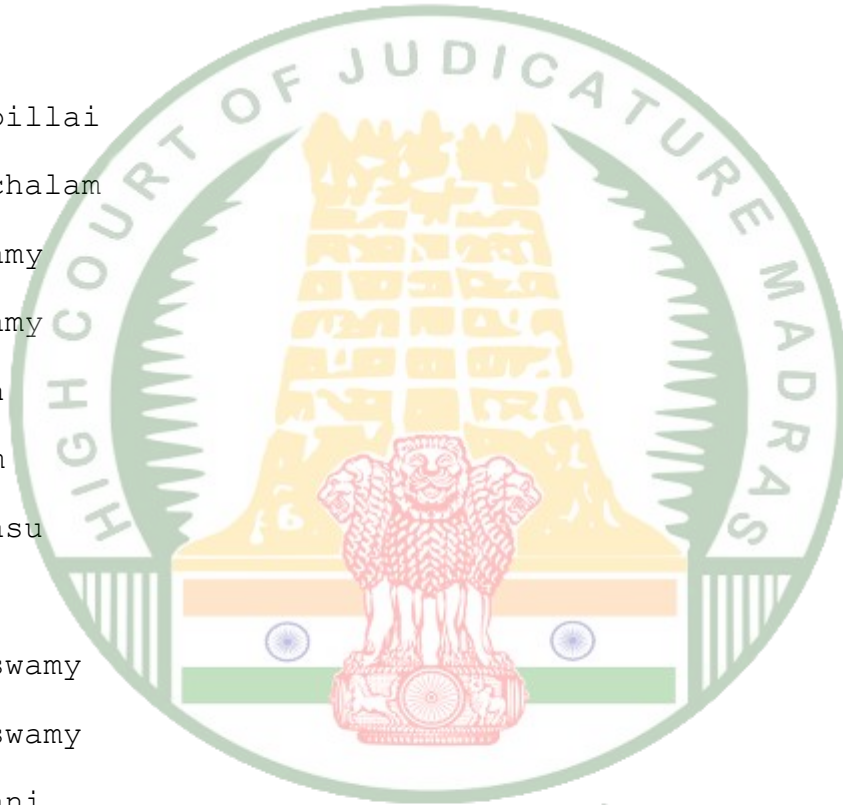
11.Chinnaswamy

12.Subramani

13.Rajendran

14.Duraisamy

15.Rajendran



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..Vs..

...Petitioners

1.The Sub Divisional Magistrate cum
The Revenue Divisional Officer
Perambalur District.

2.The Executive Magistrate cum
The Tahsildar,
Kunam Taluk,
Perambalur.

3.State rep.by
Inspector of Police,
Maruvathur Police Station,
Perambalur.

4.Chinnadurai

5.Arumugam

6.Ashokan

7.Chinnasamy

8.Gunasekaran

9.Durairaj

10.Selvamani

11.Kannan

12.Periyasamy

13.Arivazhagan

14.Marimuthu

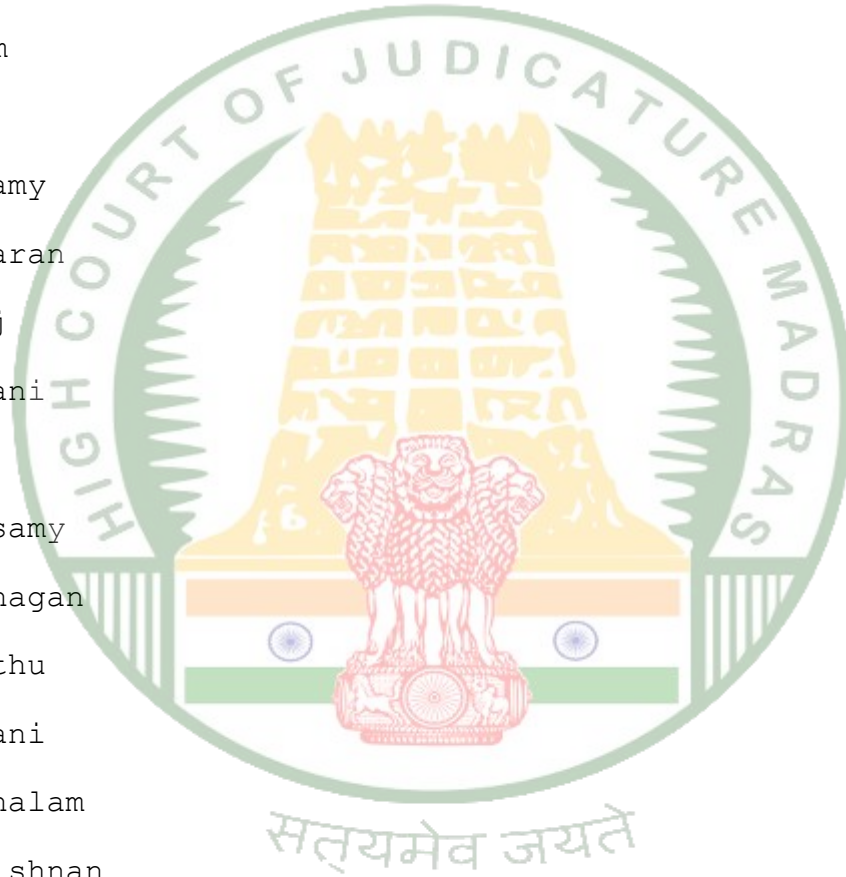
15.Subramani

16.Arunachalam

17.Balakrishnan

18.Chinnsamy

...Respondents



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This Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C. praying to set aside the order dated 16.11.2017 passed in Na.Ka.No.A3/6428/2017 on the file of the 1st respondent by confirming the order dated 09.10.2017 made in Na.Ka.No.A4/2734/2017 on the file of the 2nd respondent by allowing this Criminal Revision Petition.

For Petitioners : Mr.B.Kumarasamy

For Respondents : Mr.G.Harihara Arun Soma Sankar
Government Advocate for R1 to R3

Mr.R.Sankarasubbu for R4 to R18

O R D E R

The above criminal revision petition filed against the order passed by the first respondent dated 16.11.2017 confirming the order passed by the second respondent dated 09.10.2017.

2.The facts which give rise to filing of the present revision case are briefly stated hereunder:

The people belonging to the Maruvathur Village, Kunnam Taluk, Perambalur District, were divided in regard to the issue of carrying dead bodies to the burial ground in respect of the people who belong to Most Backward Class through Dalit Colony. The petitioners herein belong to Backward Class and Most Backward Class and whose activity of carrying dead bodies of the members belonging to their community had been strongly objected by the B-party who belong to Dalit community. According to the Dalit community, when a separate pathway is available for carrying the dead bodies of the members belonging to the A-party, in order to disturb the peace and tranquility of the Village intentionally the bodies being carried through the Dalit colonies. Since the dispute was giving rise to law and order problem in the locality, a peace committee was convened by second respondent in which both the parties were represented and participated.

3. The second respondent after hearing the version of both A and B parties has come to a conclusion that the A-party has been using the pathway going through the Dalit village only for the last 2 years, in view of certain construction being put up in the regular pathway. According to the A-party they were using the pathway for time immemorial which was discountenanced by the second respondent after hearing the parties.

4. The second respondent while hearing the parties has come to the conclusion that there was a pathway available near to Arulmigu Sengamalaiyan and Modaiyan temple which can be used to reach the burial ground by the members of the Backward and Most Backward community. According to the second respondent, already there was a communal dispute in regard to worship of members of both the communities in the temple located in the village and

there was also other disputes which are afflicting the peace and tranquility of the locality. In fact, the second respondent has noted that there was a clash between two communities and the members belonging to both the parties were injured in the clash. In view of the same, the second respondent has ruled that the members of the A-party can use the pathway on the northern side of the school as indicated in the order through Arulmigu Sengamalaiyan and Modaiyan temple tank leading to the burial ground. This rule was given by the second respondent in order to find a peace between the two communities who have a quarrel with each other. As against the order dated 09.10.2017 passed by the second respondent, an appeal was filed by the revision petitioner/A-party and the first respondent, while hearing the appeal, has fully accepted the reasons given by the second respondent and also the conclusion reached by him and dismissed the appeal vide order dated 16.11.2017, as against the same, the revision petition has been filed by the A-party.

5. The learned counsel appearing for the petitioners would submit that the pathway, which is earmarked for members of the Backward and Most Backward community for carrying the dead bodies of the members was encroached upon and unless the encroachment is removed they would not be in a position to use the pathway. According to the learned counsel, in fact, the first respondent has directed the second respondent to remove the encroachments in its order dated 16.11.2017 and till date there is no such action by the second respondent.

6. The learned Government Advocate (Crl.Side) appearing for the official respondents 1 to 3 would submit that there is a wide passage available for the members of the A-party to use the same for reaching the burial ground. The learned counsel would draw the attention of this Court to the plan showing burial ground pathway. According to the learned Government Advocate wide pathway is available which can be used by the members of the A-party without going through the Dalit colonies to reach the burial ground and the objection regarding the encroachment has no bearing on the usage of the said pathway.

7. The learned counsel appearing for the private respondents 4 to 18 would submit that the intention of the petitioners is to create communal tension and hatred as they are deliberately using the narrow pathway going through the Dalit colonies to reach the burial ground. According to the counsels appearing for the respondents, when alternative wider pathway is available, the revision petitioners/A-party is bent upon flaring up communal tension in the area and every time when dead is taken a heavy police bandobast is posted in order to maintain law and order in the locality.

8. Heard the learned counsels appearing for the parties and perused the materials available on record.

9. The order passed by the second respondent appears to be well founded in the circumstances of the case and this Court does not find anything amiss with the findings of the second respondent. When wider pathway is available for the members of the A-party to reach the burial ground, this Court is unable to appreciate as to the basis of the claim of this revision petitioner/A-party to use a particular pathway at the cost of communal harmony and goodwill.

10. It appears that these petitioners are unwilling to use the pathway as available without any justifiable cause and reason and their attitude that the dead bodies must be taken through the dalit colonies, despite the above fact, appears to be unreasonable and vindictive. Admittedly, when there is a tension between two communities in the area in regard to several other factors, it is not in the interest of peace and tranquility in the area to allow A-parties to use the narrow pathway through Dalit colonies to facilitate A-party members to reach the burial ground. The objection by the petitioners/A-party that the wider pathway is circuitous route and therefore, they ought to be allowed to use the short cut to the Dalit colony is unacceptable for the reason that the larger public interest is more important than the distance leading to the burial ground.

11. In the instant case, both the first and second respondents have recognized the ground situation and the tension between the two communities and have ruled directing the A-party to use a wider pathway as indicated in the plan enclosed along with typed set of papers on behalf of the official respondents. The objection regarding the separate pathway for usage of A-party is appears to be flimsy and unacceptable and the same cannot be countenanced both in law and facts. Ultimately, the administration has to maintain law and order and no community can have a right to disturb the peace and tranquility of the village and no community can have a vested right to use a particular pathway at the cost of public interest. In view of the above, this Court does not find any merit and substance in the revision case and, therefore, the same is dismissed. Consequently, connected miscellaneous petition is closed.

pns/cgi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Divisional Magistrate cum
The Revenue Divisional Officer
Perambalur District.
2. The Executive Magistrate cum
The Tahsildar,
Kunam Taluk,
Perambalur.
3. State rep.by
Inspector of Police,
Maruvathur Police Station,
Perambalur.
4. The Public Prosecutor,
High Court, Madras 104.

Copy to:-

The Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to M/s.R.Sankarasubbu, Advocate, SR.NO..No.5168/19

Crl.R.C.No.1611 of 2017
and
Crl.M.P.No.16574 of 2017

kak(05/03/2019)



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