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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.30717 of 2019

N.Muthukumar

...Petitioner

-Vs-

1.The Inspector of Police,
Sriperumbudur Police Station,
Kancheepuram District.

2.The Deputy Superintendent of Police,
Sriperumbudur,
Kancheepuram District.

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

4.Alagurajan

5.Prakash

6.Raja

7.Subburaman

8.The Thasildar,
Sriperumbudur Taluk,
Kancheepuram District.

...Respondents

(R4 to R8 are impleaded as per order
of this Court in Crl.MP.No.17340 of 2019
dated 25.11.2019)

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the 1st respondent to be present and permit the petitioner to remove the lock illegally put on the shutters of the "Hotel Arya Nivas" on 24.10.2019 by the said Subburaman, Prakash and the named persons in the complaint dated 24.10.2019 and further on 08.11.2019.

For Petitioner : Mr.R.C.Paul Kanagaraj

For R1 to R3 : Mr.M.Mohamed Riyaz for
Additional Public Prosecutor

For R4 to R6 : Mr.J.Srinivasan

For R7 : Mr.N.R.Elango, Senior Advocate for
Mr.M.Murugan



ORDER

This Criminal Original Petition has been filed to direct the 1st respondent to be present and permit the petitioner to remove the lock illegally put on the shutters of the "Hotel Arya Nivas" on 24.10.2019 by the said Subburaman, Prakash and the named persons in the complaint dated 24.10.2019 and further on 08.11.2019.

2. Mr.R.C.Paul Kanagaraj, the learned counsel for the petitioner has submitted that the petitioner namely Prakash and Subburaman entered into an agreement dated 01.11.2017 for running an hotel. But due to some misunderstanding between the parties, the other two partners disturbed the possession of the petitioner and hence the petitioner has lodged a complaint and based on the same an F.I.R. was registered on 23.09.2019 in Cr.No.598 of 2019 under Sections 147, 448, 379 and 506(ii) IPC. Thereafter again on 24.10.2019, the other partners came with rowdies, locked the premises and with regard to the same the petitioner had lodged a complaint before the 1st respondent, but no action was taken. The other partners who were not involved in the day today affairs of the hotel business cannot take the law in their hands. If they are having grievances they have to approach the Civil Court and workout their remedy. Instead of that, they should not lock the premises which is under the direct control of the petitioner. Thereafter, he requests to direct the 1st respondent to be present and permit the petitioner to remove the lock.

3. He further submitted that, this Court in a case having a similar set of facts, in K.Hemalatha - Vs- The Commissioner of Police, Chennai, in CrI.OP.No.14689 of 2017 by order dated 19.11.2018 directed the police to restore the possession and hence, he requests to allow this petition.

4. Per contra, the learned Senior Counsel who is appearing for the 7th respondent relying upon a decision of the Hon'ble Supreme Court in Roshina T. Vs. Abdul Azeez K.T. and others (2019) 2 SCC 329 has submitted that it is only a Civil dispute in which this Court cannot interfere. He further submitted that in the said case, a writ petition was filed with a prayer to restore possession of the property in question and the said writ petition was allowed. Appeal was filed before the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court has held that the said writ petition is not maintainable. He further submitted that when writ petition under Article 226 of the Constitution of India itself is not maintainable this Court under Section 482 of Cr.P.C. cannot give any relief to the petitioner to put him in possession of the property. He further submitted that the petitioner has to workout his remedy by filing a suit before Civil Court.



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5. The learned Additional Public Prosecutor who is appearing for the respondents 1 to 3 and Mr.J.Srinivasan, the learned counsel for respondents 4 to 6 have adopted the arguments of the learned Senior Counsel for the 7th respondent and proved to dismiss the petition.

6. In K.Hemalatha -Vs- The Commissioner of Police, Chennai (cited supra), the original tenant (Advocate) after handing over possession to the landlady, illegally opened the premises and inducted some more Advocates as sub-tenants and they purposely evaded the notice also and taking into consideration of the said facts and circumstances this Court has directed the police to ensure that the petitioner therein is put in possession. But in this case, the facts are totally different. In this case, the dispute is between the partners with regard to the running of an hotel. Therefore the aforesaid decision will not help the petitioner.

7. In Roshina.T -Vs- Abdul Azeez K.T. and others (cited supra) the Hon'ble Supreme Court, in paras 15 to 19 has held as follows:-

'15. In our view, the writ petition to claim such relief was not, therefore, legally permissible. It, therefore, deserved dismissal in limine on the ground of availability of an alternative remedy of filing a civil suit by respondent 1 (writ petitioner) in the civil court.

16. We cannot, therefore, concur with the reasoning and the conclusion arrived at by the High Court when it unnecessarily went into all the questions of fact arising in the case on the basis of factual pleadings in detail (43 pages) and recorded a factual finding that it was respondent 1 (writ petitioner) who was in possession of the flat and therefore, he be restored with his possession of the flat by the appellant.

17. In our opinion, the High Court, therefore, while so directing exceeded its extraordinary jurisdiction conferred under Article 226 of the Constitution. Indeed, the High Court in granting such relief, had virtually converted the writ petition into a civil suit and itself to a civil court. In our view, it was not permissible.

18. The learned counsel for Respondent 1 however, strenuously urged that the impugned order does not call for any interference because the High Court has proceeded to decide the writ petition on admitted facts.



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19. We do not agree with the submissions of the learned counsel for Respondent 1 for the reasons that first there did exist a dispute between the appellant and Respondent 1 as to who was in possession of the flat in question at the relevant time; second, a dispute regarding possession of the said flat between the two private individuals could be decided only by the civil court in civil suit or by the criminal court in Section 145 Cr.P.C proceedings but not in the writ petition under Article 226 of the Constitution.''

8. From the aforesaid decision it is clear that a dispute regarding possession of the property between the individuals, could be decided only by the Civil Court in Civil Suit or by the Criminal Court in Section 145 Cr.P.C., proceedings but not in the writ petition under Article 226 of Constitution of India. When this court cannot grant such a relief by exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, such relief cannot be granted by invoking 482 of Cr.P.C., also.

9. Therefore, this Court is of the view that this petition is not maintainable. It is open to the petitioner to approach the Civil Court and get appropriate relief.

10. In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

drl

To

- 1.The Inspector of Police,
Sriperumbudur Police Station,
Kancheepuram District.
- 2.The Deputy Superintendent of Police,
Sriperumbudur,
Kancheepuram District.
- 3.The Superintendent of Police,
Kancheepuram,
Kancheepuram District.



4. The Thasildar,
Sriperumbudur Taluk,
Kancheepuram District.

5. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.M.Murugan, Advocate SR.No.103516

+2cc to Mr.J.Srinivasan, Advocate SR.No.103515

+1cc to Mr.R.C.Paul Kanagaraj, Advocate SR.No.103351

Cr1.O.P.No.30717 of 2019

GMV (07/01/2020)