



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.09.2019

CORAM:

**THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**W.A. (MD) No. 913 of 2019
and
C.M.P. (MD) No. 8253 of 2019**

Muthukaruppan ... Appellant / 8th Respondent

Vs.

1) Ponselvan ... 1st Respondent /
Writ Petitioner

2) The District Collector,
Karur District,
Karur.

3) The Revenue Divisional Officer,
Karur District, Karur.

4) The Tahsildar,
Kulithalai, Karur District.

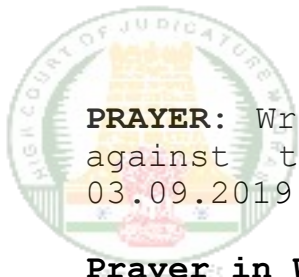
5) The Assistant Superintendent of Police,
Kulithalai, Karur District.

6) The Inspector of Police,
Lalapettai Police Station,
Lalapettai, Karur District.

7) The Assistant Commissioner,
H.R. & C.E. Department,
Karur District, Karur.

8) The Executive Officer,
Kadambeeswar Kovil-Kulithalai,
(In-charge Sree Kanaga
Thoniyamman Kovil),
Kulithalai Taluk, Karur District.

.. RR 2 to 8 / RR 1 to 7



PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) No.18891 of 2019 dated 03.09.2019.

Prayer in WP(MD) . 18891/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the respondents 1 to 7 to forthwith reconstitute the Organizing committee by persons who do not support either A party or B party as per the peace committee proceedings dated 19.08.2019 issued by the 2nd respondent for conducting the temple festival at Sree Kanaga Thoniyamman kovil is situated at Thimmachipuram, kulithalai Taluk, Karur District.

For Appellant : Mr.V.Meenakshi Sundaram
For RR 2 to 7 : Mr.S.Chandrasekar,
Additional Public Prosecutor
For R8 : Mr.P.Athimoolapandian

J U D G M E N T

The first respondent / writ petitioner filed W.P.(MD) No.18891 of 2019, seeking a Writ of Mandamus, directing the respondents 1 to 7 to reconstitute the organizing committee by persons who do not support either A party of B party as per the peace committee proceedings dated 19.08.2019 issued by the 2nd respondent for conducting the Temple festival at Sree Kanaga Thoniyamman Kovil, situated at Thimmachipuram, Kulithalai Taluk, Karur District.

2. The learned Single Judge of this Court, vide order dated 03.09.2019, disposed of the said writ petition with certain directions and it is relevant to extract hereunder the same:

"10. This writ petition has been filed seeking for a direction, directing the respondents 1 to 7 to reconstitute the organizing committee, which was formed, as per the peace committee meeting proceedings dated 19.08.2019 issued by the second respondent herein.

11. Admittedly, there are two rival groups for conducting the temple festival situated at Sree Kanaga Thoniyamman Kovil, situated at Thimmachipuram, Kulithalai Taluk, Karur District. There was a dispute between themselves from the year 2016 onwards and hence, there was no festival conducted in the village. In the year 2019, they decided to conduct the festival and as such the second respondent conducted the peace committee meeting on 19.08.2019, wherein, he has resolved that 'A' party and 'B' party shall form the organizing committee



consisting of 16 members; the said members shall not be from the 'A' party or 'B' party; after forming the organizing committee, they have to send a list of members to the Revenue Divisional Officer, Karur District and thereafter, they have to obtain prior permission from the HR & CE Department to conduct the festival that too for three days only. On perusal of records show that 'A' party themselves formed the organizing committee and decided to conduct the festival from 28.08.2019 to 07.09.2019. They have also collected donations from the general public to conduct the festival.

12. Further, it is seen that the petition in W.P (MD).No.19177 of 2019 has been filed by one Mr. Alagappan, on behalf of the entire villagers of Thimmachipuram before the Hon'ble Division Bench of this Court, in which he stated that while conducting the peace committee meeting, the Revenue Divisional Officer never called the villagers for expressing their views and therefore, he filed the said writ petition and it was adjourned to 05.09.2019. He further submitted that the said temple is under the purview of HR & CE Department. In the peace committee meeting, it is resolved that the organizing committee should obtain prior permission from the HR & CE department to conduct the festival in the above said temple. But, the 8th respondent without consulting the petitioner's party formed the organizing committee and decided to conduct the festival from 28.08.2019 to 07.09.2019.

13. Considering the above facts and circumstances of the case, the petitioner is directed to submit the representation for reconstitution of organizing committee before the Joint Commissioner, HR & CE Department, Trichy forthwith and on such representation, the Joint Commissioner, HR & CE, Trichy is directed to conduct the enquiry after issuing notice to the petitioner's party; 8th respondent's party and the petitioner in W.P(MD).No.19177 of 2019 and pass orders on merits and in accordance with law, after giving opportunity of hearing to all the parties, within a period of four weeks from the date of representation of the petitioner. Till the outcome of the enquiry conducted by the joint commissioner, HR & CE, Trichy, no one is permitted to conduct any festival at Sree Kanaga Thoniyamman Kovil, situated at Thimmachipuram, Kulithalai Taluk, Karur District.

14. Registry is directed to issue copy of this order to the Joint Commissioner, HR & CE, Trichy,



15. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed."

3. Aggrieved by the same, the eight respondent in the writ petition has come forward with the present Writ Appeal.

4. Heard both sides and perused the materials available on record.

5. It is no doubt true that in criminal matters, this Court, under Article 226 of the Constitution of India, is empowered to exercise its extraordinary jurisdiction. When such power has been exercised under Article 226 of the Constitution of India, whether the Writ Appeal (intra-Court appeal) is maintainable before this Court under Clause 15 of the Letters Patent. Under the Constitution of India, there is no provision for intra-Court appeal to be filed against the order of the Single Judge passed under Article 226 of the Constitution of India in that regard. Article 226 only deals with the power of the High Court to issue certain writs. Writ Petition could be heard either by a Single Judge or by a Division Bench consisting of two or more Judges.

6. The intra-Court appeal is provided under Clause 15 of the Letters Patent of this Court. For better appreciation, it is useful to quote Clause 15 of the Letters Patent, as follows:

"Clause 15. Appeal from the Courts of Original Jurisdiction to the High Court in its appellate jurisdiction: **And We do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment** (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Sec.107 of the Government of India Act, or **in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court**, pursuant to Sec.108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act made (on or after the 1st day of February, 1929), in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction



by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council as hereinafter provided."

7. From the above extracted Clause 15, it is clear that the appeal shall lie to this Court from the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court, subject to the superintendence of the High Court and not being an order made in exercise of revisional jurisdiction and not being a sentence or order passed. **From the above extract of Clause 15, it is also clear that intra Court appeal is not provided if a Single Judge has exercised criminal jurisdiction sitting and hearing the matter under Article 226 of the Constitution of India.**

8. Recently, a three-Judge Bench of the Supreme Court, in the decision reported in **2017 (5) SCC 533 (Ram Kishan Fauji Vs. State of Haryana)**, categorically held that it is manifest that no intra-Court appeal lies against the order of the Single Judge in exercise of the criminal jurisdiction. When there are proceedings under Article 226 of the Constitution of India arising from an order made by the Court in exercise of the power conferred under the Code of Criminal Procedure (Cr.P.C), it would be a criminal proceedings within the meaning of the Letters Patent. On a plain reading of the Letters Patent of the High Court of Judicature at Madras, it is clear that no appeal lies against the order passed by the learned Single Judge in exercise of criminal jurisdiction. Further, the Court in a writ appeal pursuant to Clause 15 of the Letters Patent, exercises appellate jurisdiction and not a jurisdiction as conferred under Article 226 of the Constitution of India. When a power conferred under Article 226 of the Constitution of India is invoked at the instance of a litigant with regard to any criminal matter, it is deemed to have been exercised by the Court under Section 482 Cr.P.C. Hence, no intra-Court appeal is permissible. The Bench hearing the matters pertaining to Section 482 Cr.P.C. cannot exercise the jurisdiction under Article 226 of the Constitution of India, whereas the Bench hearing the matters exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, is empowered to deal with the issues that may fall under Section 482 Cr.P.C. As the jurisdiction exercised in this case is one under Section 482 Cr.P.C., only appeal will lie to the Supreme Court and not before the Division Bench of the Court.

9. In view of the above observations and discussion so made, we are of the view that the Writ Appeal is not maintainable against the order passed under Criminal Jurisdiction by the learned Single Judge



under Article 226 of the Constitution of India. Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected C.M.P.(MD) No.8253 of 2019 is closed.

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar

To

- 1) The District Collector,
Karur District, Karur.
- 2) The Revenue Divisional Officer,
Karur District, Karur.
- 3) The Tahsildar,
Kulithalai, Karur District.
- 4) The Assistant Superintendent of Police,
Kulithalai, Karur District.
- 5) The Inspector of Police,
Lalapettai Police Station,
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- 7) The Executive Officer,
Kadambeeswar Kovil-Kulithalai,
(In-charge Sree Kanaga
Thoniyamman Kovil),
Kulithalai Taluk, Karur District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-86324[F] dated 12/09/2019
+1 CC to M/s.S.GOKULRAJ, Advocate (SR-86385[F] dated 12/09/2019

Judgment made in

W.A. (MD) No. 913 of 2019

Dated:10.09.2019

sts

MS/04.10.2019/6P.10C