

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.18440 of 2015

1. Mangaiyarkarasi (F/A-50 Yrs),
Joint Commissioner Secretary,
H.R. & C.E (Adm) Dept.,
Salem-636 001.
 2. M.Asanambigai (F/A-42 Yrs),
Thakkar/Executive Officer,
Arulmigu Chentoga Perumal Thirukoil,
Semcardapatti,
(at Arulmigu Prasanna Venkataramanswami Thirukoil),
Chinna Thirupathi, Omalur Taluk,
Salem District.
 3. S.Kalpna Dutt, (F/A-44 Yrs),
Inspector, H.R & C.E (Amd.) Dept.,
Omalmr-636 455.
Salem District.
- Vs.
1. State represented by,
Inspector of Police,
Omalmr Police Station,
Salem District.
(Crime No.573/2014).
 2. A.Radhakrishnan
- ... Petitioners
- ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the first information Report in Crime No.573 of 2014 registered by the respondent Police, insofar as it relates to the petitioner herein.

For Petitioners:	Mr.G.Punniyakotti
For R1	: Mr.C.Iyyappa Raj, Additional Public Prosecutor
For R2	: Mr.A.Ashwin Kumar, Legal Aid Counsel

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.573 of 2014 pending on the file of the 1st respondent Police.

2.On the complaint lodged by the 2nd respondent, the 1st respondent registered a case in Crime No.573 of 2014 against the petitioners and others, for offence under Sections 120-B, 170 IPC r/w Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

3.The gist of the complaint is that the 2nd respondent forwarded a complaint dated 27.06.2014 via Telegram to the 1st respondent claiming that for the past 20 years, he is involved in public service and for the past 10 years, he had been raising questions against the mismanagement in the temples and encroachment of the temple lands and strenuously working for the welfare of the temple and was regularly filing cases before this Court in this regard. The one such temple viz., Arulmigu Sendrada Perumal Thirukovil, situated at Pagalpatti Village, Omalur Taluk, Salem District, the 5 acres 19 cents of temple land in Chellapillai Village were encroached. To vacate the encroachers from the temple land, he lodged a complaint to the Anti Land Grabbing Cell, Salem in Crime No.18 of 2012, for offence under Sections 467, 488, 471 and 420 IPC. Thereafter, the land was retrieved by the temple. Likewise, he had been retrieving various temple lands from the encroachers in and around Salem.

4.The temple land belonging to Arulmigu Sendrai Perumal Thirukovil, Semmandapatty Village, Omalur Taluk, Salem District, are encroached by the Priest of the said temple, without paying any rent and claimed that the lands were given for the purpose of conducting poojas. In respect of the same, the Commissioner, Hindu Religious and Charitable Endowments did not pass any such order in favour of the Priest of the said temple, to use the temple land. This being so, the temple authorities and the officials of Hindu Religious and Charitable Endowments are hand in glove with the said Priest and failed to take any action against the said Priest. Further, there is a circular in Na.Ka.No.86344/96/V2, dated 20.04.1994 that the tress which are in the temple lands are the properties of the temple and the same to be registered in the Tree Register, which has to be sent to the Assistant Commissioner by the Inspector of Hindu Religious and Charitable Endowments Department, but the same was not followed in Arulmigu Sendrai Perumal Thirukovil, Semmandapatty Village, Omalur Taluk, Salem District.

5. On 01.06.2014, at about 02.30 p.m., when the 2nd respondent was surveying the said temple lands, found three coconut trees were completely cut down and removed. The 2nd respondent questioned the 3rd petitioner about the same and he informed that she would immediately send report to the higher officials about the act of Periyasamy, Palanisamy and Siva to the 2nd petitioner as well as to the 1st petitioner. On 09.06.2014, an enquiry was conducted by the 1st respondent Police. At that time, the said Periyasamy, Palanisamy and Siva admitted that they were cut down the three coconut trees and willing to pay compensation for the same and requested for withdrawal of the complaint. The 2nd petitioner, the Executive Officer of the temple accepted the same. The acceptance is without obtaining permission and approval from the Commissioner of the Hindu Religious and Charitable Endowments Department. When the 2nd respondent informed the same to the 1st petitioner, the 1st petitioner informed that she would take action against the persons, who were cut down the trees, but till date, no action taken. Hence, the above complaint filed against the officials of the Hindu Religious and Charitable Endowments Department and other persons, against which the present petition.

6. The learned counsel for the petitioners submitted that the 1st petitioner is the Joint Commissioner, Hindu Religious and Charitable Endowments (Adm.) Department, Salem; 2nd petitioner is the Thakkar/Executive Officer of Arulmigu Chentoga Perumal Thirukoil, Semmandapatti (at Arulmigu Prasanna Venkataramana Swami Thirukoil Chinna Thirupathi, Omalur Taluk), Salem District; 3rd petitioner is the Inspector of Hindu Religious and Charitable Endowments (Adm.) Department, Omalur, Salem District. The learned counsel further submitted that the 1st petitioner is in-charge of the entire administration of Hindu Religious and Charitable Endowments Department of Salem, Namakkal and Dharmapuri and the work of the 1st petitioner is supervisory in nature. Added to it, as a Joint Commissioner, the 1st petitioner is to conduct regular Court hearing pertaining to the Tamil Nadu Hindu Religious and Charitable Endowments and he inspects the entire district of Salem, Namakkal and Dharmapuri.

7. The learned counsel for the petitioners further submitted that the the petitioners works are prescribed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The temple viz., Arulmigu Sendrai Perumal Thirukovil, Semmandapatty Village, Omalur Taluk, Salem District is under the control of the 2nd petitioner/Thakkar/Executive Officer/, who has a separate office with the Assistants of temple staffs. The 2nd respondent/Executive Officer is managing the affairs of the temple and also holding additional charges of other temple. In the premises of the said temple, the three coconut trees, which were of no use, removed by Periyasamy, Palanisamy and Siva, for

which a complaint was lodged on 09.04.2014 by the 2nd petitioner/Executive Officer. Thereafter, the said persons appeared and paid compensation for the cut down coconut trees. Hence, the 2nd petitioner withdrew the complaint and reported the same to his higher officials.

8.The learned counsel for the petitioners further submitted that as regard the 3rd petitioner/the Inspector, Hindu Religious and Charitable Endowments Department is concerned, she was in-charge of the entire Omalur Division and she has to visit the listed and non-listed temples and also village temples and to verify account register and also be present during 'Hundial' opening and during festival.

9.On receipt of the information from the 2nd respondent/Executive Officer about cutting down of tress from the said temple, the 2nd petitioner sent a report to the higher authorities. As far as the petitioners are concerned, they have all taken proper and immediate action in this regard. The 2nd respondent for the purpose of publicity and to exert pressure to the temple authorities, lodged a false complaint. In this case, admittedly, no sanction has been obtained from the concerned authorities to prosecute the petitioners.

10.It is further submitted that as per Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, it is only an alienation of immovable property, the sanction of the Commissioner is pre-requisite. Likewise, the 2nd petitioner has been appointed under Section 45 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and the Executive Officer to act as per defined powers given by the Commissioner. The petitioners are to act as per the Tamil Hindu Religious and Charitable Endowments Act, where their powers and duties are given and how the temple accounts and records regularly to be inspected by the authorities of the department.

11.There is a separate audit wing, which verifies the records if any loss or waste of money and if any neglect and misconduct are found, surcharge proceedings will be initiated and the loss would be recovered. In this case, no such adverse audit report is made against the petitioners.

12.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that a complaint was given against the petitioners and others on 27.06.2014 by the 2nd respondent. On receipt of the complaint, the petitioners and others were called for enquiry and documents verified to find out the genuineness of the claim. The 2nd respondent claims himself to be an Activist and person interest in welfare of the temple and its properties and he has been sending complaint and making

representations to the 1st respondent and other officials of the Hindu Religious and Charitable Endowments Department. In this case, the 2nd respondent lodged a complaint through Telegram, on receipt of the same, an FIR was registered and investigation was commenced. During investigation, the above petition came to be filed.

13. The learned counsel for the 2nd respondent submitted that the 2nd respondent has been strenuously working for the welfare and benefit of the temple for the past 10 years. He further submitted that in and around the District of Salem, Namakkal and Dharmapuri, various temple lands are encroached by the encroachers and thereby, denying the rightful earnings of the temple and the temples are unable to conduct regular poojas. The 2nd respondent being a social activist, moving around, identifying the temple properties, finding the encroachments, making representations to the temple authorities to take appropriate action against them.

14. In this case, the petitioners found that the other accused are cut down the three coconut trees belonging to the temple. Hence, the 2nd respondent lodged a complaint. The 1st petitioner being the Joint Commissioner Secretary, Hindu Religious and Charitable Endowments Department, who is overall in-charge of the Department for Salem and Dharmapuri and failed to take any action. The 2nd petitioner/Executive Officer of the temple gave a letter to the 1st respondent police that on 09.04.2014 that the compensation amount collected from the persons viz., Palanisamy, Periyasamy and Siva and hence, no action need to be taken. The 3rd petitioner is the Inspector of the Hindu Religious and Charitable Endowments Department, Omalur failed to take any immediate action on the encroachers and hence, the petitioner had sent a telegram to the 1st respondent. Further, the Commissioner is the authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Though there is a specific duty assigned from the Commissioner to follow the procedure as per the Act, the same has not been followed by the petitioners in connivance with the other accused.

15. This Court considered the rival submissions and perused the materials available on records.

16. It is seen that the 1st petitioner is the Joint Commissioner Secretary, Hindu Religious and Charitable Endowments (Adm.) Department, Salem; 2nd petitioner is the Thakkar/Executive Officer of Arulmigu Chentoga Perumal Thirukoil, Semmardapatti (at Arulmigu Prasanna Venkataramana Swami Thirukoil Chinna Thirupathi, Omalur Taluk), Salem District; 3rd petitioner is the Inspector of Hindu Religious and Charitable Endowments Department, Omalur Taluk, Salem District.

The Tamil Nadu Hindu Religious and Charitable Endowments Department is governed and administered as per the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The Act is a self contained law, wherein the law is laid down that how the temple has to be administered and properties to be safeguarded.

17. In this case, cutting down of coconut trees were taken note by the 2nd petitioner/Executive Officer and he received compensation from the persons cut down the trees and accounted the same in the temple records. The 1st petitioner, in-charge of temples in and around Salem and Dharmapuri Districts, was informed by way a report by the 2nd petitioner/Executive Officer through the 3rd petitioner jurisdictional Inspector and the reports are submitted that as per the officials proceedings. The audit department has not found any adverse remarks and no surcharge proceedings initiated.

18. The 2nd respondent without knowing the procedure and working of the department, had sent a complaint through telegram to the 1st respondent Police and the 1st respondent Police, without ascertaining the same, immediately acted on the telegram. The 2nd respondent being a social activist, has been regularly raising such issues and also making publicity through media and causing disturbance and discomfort to the temple authorities and also to the police authorities. Functioning and working of the temples and up keeping its properties is codified and each of the officers', duties and responsibilities. In this case, the petitioners are the officials of the Hindu Religious and Charitable Endowments Department, who had taken prompt and effective steps as per the Act. It is also found that there is no adverse Audit Report in this regard. In view of the same, this Court finds that the continuation of the investigation against the petitioner is unwanted.

19. In the result, the continuation of the investigation would amount to abuse of process of law. The petition is, accordingly, allowed. सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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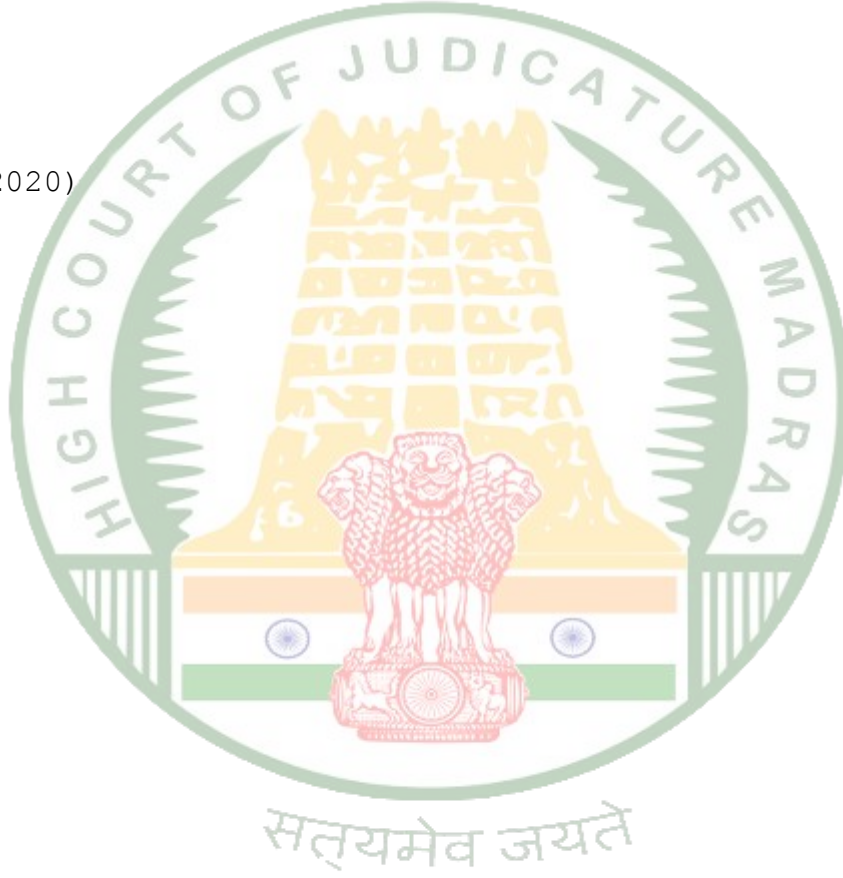
To

1.The Inspector of Police,
Omalur Police Station,
Salem District.

2.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.18440 of 2015

NRL (CO)
SP (04/11/2020)



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