



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.09.2020

Delivered On : 30.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.418 of 2020

and

Crl.M.P.(MD)No.3686 of 2020

Thangasamy @ Vincent

.. Petitioner/Respondent

Vs.

1.The Sub Divisional Magistrate,
Padmanabapuram Division,
Kanyakumari District.

2.Sundar Singh

3.Piusraj

4.Ravichandran

5.Thambi Jacob

.. Respondents /Petitioners

Prayer : This criminal revision case is filed under Sections 397(1) r/w. 401 of Cr.P.C., to call for the records and to set aside the order in Roc. No.B2/1958/2020 dated 12.06.2020, on the file of the first respondent.

For Petitioner : Mr.G.Prabhu Rajadurai

For 1st Respondent : Mr.K.Dinesh Babu

Additional Public Prosecutor

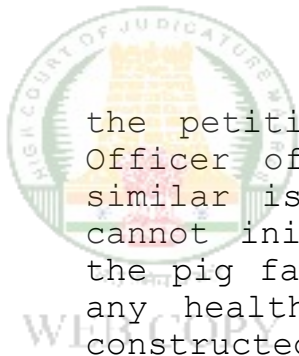
For Respondents 2 to 5: Mr.G.Anto Prince

ORDER

This petition has been filed to set aside the order passed in Roc. No.B2/1958/2020 dated 12.06.2020, on the file of the first respondent.

2.The petitioner is running a pig breeding business. The first respondent passed an order under Section 133(1) of Cr.P.C., to cease the function of the piggery and to remove the animals from the vicinity. Aggrieved by the said order, the petitioner has preferred the revision case.

3.On the side of the petitioner, it is stated that the first respondent did not follow the procedures under Section 138 of Cr.P.C., and that the copies of the documents are not furnished to



the petitioner. Already a proceedings initiated by the Executive Officer of the Town Panchayat was stayed by this Court. When a similar issue is pending before this Court, the first respondent cannot initiate a parallel proceedings. The petitioner is running the pig farm for the past 15 years, in a most hygienic way without any health hazards or nuisance to any one. The petitioner has constructed a compound wall to protect the pig farm. Right of profession is a fundamental right and prayed to set aside the order passed by the first respondent.

4. On the side of the first respondent, it is stated that more than 70 residents of the locality constantly sending complaints about the inaction on the part of the administration demanding an order for the closure of the pigsty. The Tahsildar, Revenue Inspector and Village Administrative Officer were directed to make local enquiry and after enquiry, they submitted a report. The pigsty is situated in the midst of a residential area and that more than 100 families are residing there within a radius of 10 metres. On 07.05.2020, the petitioner promised the Executive Officer to remove the farm within a period of 15 days. But he failed to do so.

5. As there was a fear of spread of disease during the pandemic situation and on the demand of the residents, the first respondent took cognizance of the situation and served a conditional notice to the petitioner under Section 133(1) of Cr.P.C., which reads as follows:

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on



business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

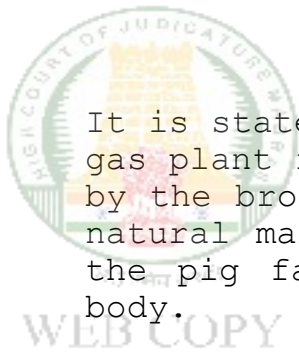
(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court"

6. On the side of the first respondent, it is stated that the petitioner failed to produce necessary permissions and No Objection Certificates from the concerned Departments. The petitioner has filed only copy of the order in W.P(MD).No.10315 of 2012, which was passed against the Municipality.

7. The contention of the petitioner is that the petitioner is keeping the area clean and the petitioner is rearing 50 pigs in his land. The farm is surrounded three sides by the land of the brother of the petitioner. The residential area is only on one side of the pig farm, that too at a distance of 100 m. There is a road in between and there is no question of any disturbance to the public.



It is stated that the waste of the pigs is directly taken to the bio gas plant for producing cooking gas and the gas so generated is used by the brother of the petitioner and the remaining waste is used as natural manure for the rubber thoppu, which is situated 8 kms from the pig farm. There is no nuisance or any health hazards to any body.

8.The petitioner has attached an acknowledgement letter dated 29.04.2011 along with the copy of the petition filed before the Tamil Nadu Department of Industries and Commerce. The petitioner has attached a letter dated 29.05.2012 from the RDO for sanction of a sum of Rs.8,000/- (Rupees Eight Thousand only) for setting up a bio gas plant. The petitioner has attached a letter from a Veterinary Surgeon dated 28.06.2012 stating that the Veterinary Doctor is taking care of the pigsty.

9.It is seen that on 19.07.2012, the Secretary Milagumoodu Panchayat Union has sent a notice to the petitioner under Section 240 of the Municipality Act. Against that order, the petitioner obtained a stay order in W.P.(MD)No.10315 of 2012 dated 26.07.2012.

10.The freedom of profession ensured in Article 21 of the Constitution is subject to rules and regulations relating to the particular profession.

11.The petitioner has not stated that he has obtained necessary permissions or No Objection Certificate from the concern department, for running a pigsty. The petitioner has not produced any valid documents to show that he obtained necessary permission from the concern departments. The copy of the application dated 29.04.2011, submitted by the petitioner reveals that he applied for permission for manufacturing pig feed and not for breeding pigs. No document for grant of permission by the Tamil Nadu Department of Industries and Commerce was filed by the petitioner. Instead of producing No Objection Certificate from the animal husbandry, the petitioner has filed only a certificate dated 28.06.2012 issued by a Veterinary Doctor. Mere certificate from a Veterinary Doctor stating that he is taking care of the piggery cannot be treated as a permission for running a pig farm.

12.The writ order was passed by this Court only against the Municipality and not against the respondent. The writ order was passed on the ground that no opportunity was given to the revision petitioner in that earlier proceedings. Pandemic situation creates fear in the minds of the public. Admittedly the petitioner is shifting the waste from the farm to a rubber thoppu, which is situated 8 kms away from the farm. It is necessary that the petitioner has got No Objection Certificates and necessary permission from the concerned Departments.



13. In the above circumstances, the petitioner is granted two months time for obtaining necessary permission from the concerned Departments after following all the prescribed procedures. Failing which, the first respondent is at liberty to proceed further in accordance with law.

WEB COPY

14. With the above direction, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mrn

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sub Divisional Magistrate,
Padmanabapuram Division,
Kanyakumari District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-23271[F] dated
30/11/2020)

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-23399[F] dated
01/12/2020)

Crl. R.C.(MD)No.418 of 2020
30.11.2020

VB (07.12.2020) 5P 5C