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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.08.2020

Delivered on : 15.09.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)Nos.450 and 451 of 2020

and

Crl.M.P.(MD)Nos.3933 and 3935 of 2020

Crl. R.C.(MD)No.450 of 2020

- 1.Kesavamani
- 2.Sivabalan
- 3.Sevarakodiyon
- 4.M.Senthilnathan
- 5.P.Senthilnathan
- 6.Sundarrajan
- 7.Kalimuthu
- 8.Anand
- 9.Baskaran
- 10.Subramanian
- 11.Venkatachalapandian
- 12.Ramanathan
- 13.Sundaram
- 14.Kaalairajan
- 15.Raman
- 16.Muthulingam

.. Petitioners / 'B' party
Vs.

1.The Sub Divisional Magistrate and
Revenue Divisional Officer,
Devakottai Sub Division,
Devakottai, Sivagangai District.

2.The Sub Inspector of Police,
Aaravayal Police Station,
Sivagangai District.

3.M.Rajakumar .. Respondents / Respondents

Prayer : This Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C., to call for the records and set aside the order passed by the Sub Divisional Magistrate and Revenue Divisional Officer, Devakottai Sub Division in Na.Ka.No.3146/2020/A1, dated 27.07.2020.

For Petitioners : Mr.G.Thalaimutharasu

For R1 and R2 : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.K.Dinesh Babu
Additional Public Prosecutor
: Mr.S.Muniyandi



Crl. R.C.(MD)No.451 of 2020

Rajkumar

.. Petitioner / 1st respondent

Vs.

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1.The Sub Divisional Magistrate and
Revenue Divisional Officer,
Devakottai, Devakottai,
Sivagangai District.
Na.Ka.No.3146/2020/Aa1

2.The Sub Inspector of Police,
Aaravayal Police Station,
Sivagangai District.

.. Respondents 1&2 /
Complainants

3.Kesavamani
4.Sivabalan
5.Sevarkodiyon
6.P.Senthilnathan
7.Senthilnathan
8.Sundarrajan
9.Kalimuthu
10.Anand
11.Baskaran
12.Subramanian
13.Venkatachalapandian
14.Ramanathan
15.Sundaram
16.Kalairajan
17.Raman
18.Muthulingam

.. Respondents 3 to 18 / 'B'Party

Prayer : This Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C., to call for the records of the order in Na.Ka.No.3146/2020/Aa1, dated 27.07.2020, passed by the first respondent and set aside the same.

For Petitioner : Mr.R.Mariappan

For R1 and R2 : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.K.Dinesh Babu
Additional Public Prosecutor

For R3 to R18 :Mr.G.Thalaimutharasu



COMMON ORDER

These revisions have been filed to set aside the order dated 27.07.2020 , in Na.Ka.No.3146/2020/A1, passed by the first respondent.

2. The second respondent submitted a report before the first respondent in security proceedings Register No.02/2020 under Section 107 Cr.P.C, stating that there is always some dispute between two groups of people regarding a car festival of Sornamutheeswarar temple situated in Kandadevi village. On 13.05.2015, at about 13 hours, there was a riot in that area. Based on that report, the first respondent issued a show cause notice, in A1/3146/2020, dated 02.06.2020, under Section 111 Cr.P.C. and after hearing the case, he directed the petitioners to execute a bond for a sum of Rs.50,000/- each to maintain peace for a period of one year. Against that order, the petitioners preferred this revision.

3. On the side of the petitioners, it is stated that the petitioners were not given opportunity to file an appeal and they were compelled to execute bonds on the same day. When there is a dispute between two groups of people, the first respondent took action only against one of the groups. Though there is a statement that the petitioners can go for appeal before the District Collector, no opportunity was given to the petitioners to file an appeal. No independent witness was examined by the first respondent. Five persons from the 'B' party were not present, but, they were also directed to execute bonds. Only 12 persons, ie. B2, B4 to B8, B10, B12 to B15, B17, from 'B' party have appeared with their Advocates. Five persons, ie. B1, B3, B9, B11 and B16, who were absent on that day, cannot be compelled to execute a bond. The proceeding in their (ie. B1, B3, B9, B11 and B16) absence is invalid. The survey number, in which 'A' party were claiming rights is different. Without taking action against the 'A' party, the impugned order is a biased one.

4. On the side of the respondents, it is stated that the Executive Magistrate received information regarding the disturbance to the public tranquility. Only to maintain peace in that locality, a show cause notice was issued on 23.07.2020. Except five persons, all others in 'B' party appeared in persons and through advocates and they denied the charges. The petitioners were given opportunity to be represented through Advocates and their arguments were heard. Only after giving sufficient opportunity, the first respondent has passed the impugned order. The first respondent was satisfied that there was disturbance to public tranquility, only as a preventive measure, notice was issued to both the parties. 'A' party obtained a stay order in Crl.O.P.(MD)No.6480 of 2020 and Crl.M.P.(MD)No.3320 of 2020, dated 23.06.2020. Hence, there is nothing wrong in passing the impugned order against the 'B' party. Appeal remedy is available to the 'B' party, without availing the appeal remedy, the



5. On the side of the petitioners, it is stated that when a show cause notice was stayed by this Court in favour of 'A' party, there is no question of proceeding with the same show cause notice against the 'B' party.

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6. On the side of the respondents, by way of reply, it is stated that the stay is applicable only for 'A' party and the stay is not applicable for the 'B' party.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. It is seen that there is a civil dispute between two group of people. 20 persons are having patta land near the temple tank. A Resolution was passed in the Panchayat, not to allow any construction in the patta land. It is stated that a person by name Venkatachalapandian (B12) obtained an order from this Court, preventing the construction in the disputed property. One person by name Balasubramanian, has put up a tin shed in survey No.164/2 and he got electricity connection on 13.05.2020. The 'B' party tried to remove the tin shed and the same was objected by 'A' party. Both the parties filed complaints before the Araavayal police station, in C.S.R.Nos. 58/2020 and in 62/2020.

9. On the basis of the report filed by the second respondent, the first respondent issued a show cause notice in M.C.8 (3146)/2020/Aa1, dated 02.06.2020, under Section 107 Cr.P.C. On 10.06.2020, the first respondent conducted an enquiry, one Murugan, was examined in part and the matter was adjourned to 17.06.2020. 'A' party approached this Court and they got an temporary injunction order in their favour.

10. The first respondent issued a notice to 'B' party, to appear on 23.07.2020 at about 11.00 am. 12 persons, who belonging to 'B' party, were present and 5 persons were absent. Enquiry was conducted under Section 116 of Cr.P.C and the charges were explained. 'B' party denied the charges. An Advocate for B1, B7, B8, B9, B10, B11 and another Advocate for B2 to B6, B12 to B17 were given opportunity to argue the case. The second respondent was cross-examined by the Advocates, who appeared for the 'B' party.

11. The first respondent issued show cause notice to both the parties in M.C.8 (3146)/2020/Aa1, dated 02.06.2020. 'A' party approached this Court and obtained a stay order, the first respondent proceed with the same show cause notice against 'B' party and passed the impugned order.

12. It is seen from the impugned order that there are video clippings regarding the occurrence and the video clippings were served to the first respondent, in which, 'A' party was found armed



with weapons.

13. The legal validity of the village resolution and the applicability of stay order obtained by B12 to the disputed area cannot be decided in this petition. From a perusal of the stay order in Crl.O.P.(MD)No.6480 of 2020 and Cr.M.P.(MD)No.3320 of 2020, it is seen that the show cause notice, Na.Ka.No.3146/2020/A1, dated 02.06.2020 was stayed by this Court. when the original show cause notice was stayed, the first respondent cannot proceed with the same show cause notice. The first respondent was not given any special permission by this Court to continue with the same show cause notice against the 'B' party.

14. In the above circumstances, the impugned order passed by the first respondent in Na.Ka.No.3146/2020/A1, dated 27.07.2020, is set aside and these Criminal Revision Cases are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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 and
Revenue Divisional Officer,
Devakottai Sub Division,
Devakottai, Sivagangai District.
- 2.The Sub Inspector of Police,
Aaravayal Police Station,
Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. THALAIMUTHARASU, Advocate (SR-16982[F] dated 15/09/2020)

Crl. R.C.(MD)Nos.450 and 451 of 2020

15.09.2020

SCR(CO)