



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.11525 of 2020

and

Crl.M.P. (MD)No.5270 of 2020

WEB COPY

Palanivel nadar

... Petitioner

Vs.

1.The Sub Divisional Magistrate and
Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.

2.The Sub Inspector of Police,
Puthiyamputtur Police Station,
Thoothukudi District.

... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the entire records in relating to the impugned proceedings of the 1st respondent in Na.Ka.A1/6086/2020 dated 24.09.2020 and to quash the same.

For Petitioner : Mr.M.S.Jeya Karthick

For Respondents : Ms.S.E.Veronica Vincent,
Government Advocate (Crl. Side)

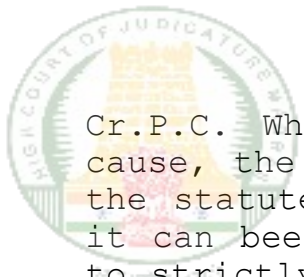
ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents.

2.The case of the petitioner is that based on the conditional order dated 24.09.2020, the second respondent is attempting to remove the flag pole installed by the petitioner. The petitioner's counsel draws my attention to the certificate issued by one Engineer namely., Mr.S.Thomas, who has certified regarding structural stability of the flag pole. The petitioner's counsel also places reliance on the order dated 04.03.2020 passed by me in Crl.O.P. (MD) No.3530 of 2018.

3.The learned Government Advocate (Crl. Side) points out that the petitioner had installed the flag pole in such a manner that it is likely to endanger the safety of the general public. It has been located quite close to the busy main road ie., Thoothukudi - Madurai bye pass road.

4.However, it cannot be disputed that the proceedings have been initiated by the Executive Magistrate only under Section 133 of



Cr.P.C. When the notice has given his explanation and has shown cause, the authority is bound to hold an enquiry as contemplated by the statute and only after the conditional order is made absolute, it can be enforced. Therefore, the first respondent is directed to strictly adhere to the procedure laid in Criminal Procedure Code and pass orders on the petitioner's explanation. Till then no coercive action can be taken.

5.I have held in the earlier order that the approach of the authorities cannot be selective. The authorities cannot target one party or group alone. They will have to be even handed and uniform while enforcing the statutory mandate.

6.With this direction, the criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// 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,
Kovilpatti,
Thoothukudi District.

2.The Sub Inspector of Police,
Puthiyamputtur Police Station,
Thoothukudi District.

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

+1 CC to M/s.M.S.JEYAKARTHICK, Advocate (SR-20509[F] dated
19/10/2020)

Cr1.O.P (MD) No.11525 of 2020
16.10.2020

sj (CO)

KK (02.11.2020) 2P 5C

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