



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.02.2021

Delivered On : 08.03.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.506 of 2020

and

Crl.M.P.(MD)Nos.4521 and 4522 of 2020

V.Anand

.. Petitioner

Vs.

1.The Sub Division Magistrate - Cum -Sub Collector,
Padmanabhapuram,
Thakkalai Post,
Kanyakumari District.

2.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

3.A.Al.Ameen

4.A.Selvaraj

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the impugned order in Na.Ka.No.A2/2694/2019 dated 03.06.2019 on the file of the respondent no.1 and to set aside the same as illegal.

For Petitioner : Mr.I.Pinaygash

For Respondents 1 and 2 : Mr.S.Chandrasekar

Additional Public Prosecutor

For 3rd Respondent : Mr.Mohaboob Athiff

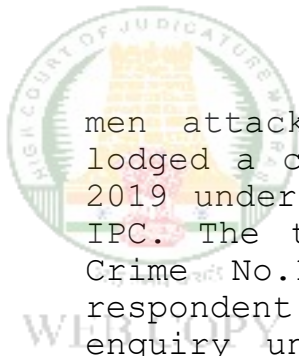
For M/s.Ajmal Associates

For 5th Respondent : Mr.Shabu Jose

ORDER

The first respondent passed an order in Na.Ka.A2/2694/2019 dated 03.06.2019 under Section 145 of Cr.P.C., on 03.06.2019 to keep door no.32/100B, Sri Anantha Bhavan Hotel under lock and key. The petitioner has preferred this Criminal Revision Case to set aside the impugned order.

2.The case of the petitioner is that the petitioner is the absolute owner of the property in R.S.No.D5/237-2 with an extent of 4.707 cents and the petitioner is running a hotel in the name of 'Sri Anantha Bhavan Hotel' in the said property in door No.32/100B Main Road, Marthandam Post, Kanyakumari District and the petitioner has obtained GST, Professional Tax, Property tax, Possession Certificate, Electricity Service Connection in his name. On 21.05.2019 at 09.00 a.m., the third respondent who is the owner of Mubharak Hotel, which is situated adjacent to the petitioner's hotel tried to disturb the possession of the property and he and his



men attacked the petitioner and caused injuries. The petitioner lodged a complaint before the second respondent in Crime No.188 of 2019 under Sections 147, 148, 447, 427, 294(b), 324 and 506(ii) of IPC. The third respondent filed a case against the petitioner in Crime No.187 of 2019. The matter was referred to the first respondent by the second respondent. The first respondent conducted enquiry under Section 145(1) of Cr.p.C., and after enquiry, he passed the impugned order. Against the impugned order, the petitioner preferred this revision.

3.On the side of the petitioner, it is stated that in the impugned order, the first respondent has made an observation that the property belong to the petitioner. The closure of the hotel was ordered only based on the cases in Crime Nos.187 of 2019 and 188 of 2019. Both the cases were subsequently closed on 16.07.2019 and 17.07.2019 respectively.

4.On the side of the petitioner, it is stated that in the impugned order, it is clearly stated that the property is in the name of the petitioner in the revenue records.

5.It is stated that except an unregistered fabricated consent letter, the third respondent has not produced any documents before the first respondent. In the impugned order, the first respondent has observed that no other document was filed by the third respondent and even then the impugned order was passed by the first respondent and prayed the impugned order to be set aside.

6.On the side of the petitioner, it is further stated that when a civil suit is pending, the impugned order become infructuous and the first respondent is not having any right to decide the title between the parties.

7.In support of his contention, the judgment passed by this Court in the case of ***Dr.Christopher Asir v. The RDO, Madurai*** reported in ***2008 (2) TNLR 167 (Mad)*** and another judgment passed by the Hon'ble Apex Court reported in ***2006(11) SCC 66*** were cited.

8.On the side of the first respondent, it is stated that since there was an apprehension of breach of peace, the impugned order was passed by the first respondent. There was no title dispute. The dispute is only with regard to possession of the property. Both the parties produced documents pertaining to the running of the hotel from the year 2017 onwards. A decision as to the possession could not be reached and that the right of possession has to be decided by the civil court. It is stated that the first respondent is having power to pass an order whenever there is a breach of peace concerning any land or water within his local



jurisdiction and that this petition to be dismissed.

9. On the side of the third respondent, it is stated that the first respondent is entitled to pass an order under Section 146 of Cr.P.C., when there is a doubt regarding the possession of the property and when there is a likelihood of breach of peace in the locality. It is stated that the petitioner tried to trespass the property which was in the possession of the third respondent and that the third respondent lodged a complaint against the petitioner. In the impugned order, it is clearly stated that the dispute is only regarding possession. The first respondent has not decided anything regarding the title and he has clearly stated that he could not find out who is in possession. The suit was filed subsequent to the impugned order. The court cannot interfere in the order unless the order is perverse and prayed the petition to be dismissed.

10. In support of this contention, a judgment of the Punjab and Hariyana High Court reported in **1983 SCC Online P&H 687** and a judgment of the Patna High Court reported in **1987 SCC Online Pat 102** are cited on the side of the third respondent.

11. It is seen that the petitioner and the third respondent filed complaint against each other before the second respondent. The second respondent has registered two FIRs in Crime Nos. 187 of 2019 and 188 of 2019. The second respondent has referred both the cases to the first respondent. It is seen that the first respondent conducted enquiry wherein the revision petitioner produced documents regarding his title and possession and the third respondent has produced an unregistered consent letter which is alleged to have been signed by the father of the revision petitioner and his brother.

12. Only after passing of the impugned order dated 03.06.2019, the revision petitioner has filed a civil suit in O.S.No.108 of 2019 on 04.06.2019. Admittedly the first respondent has not decided the title of the property. He has stated that he could not find out who was actually in possession. It is seen that both the FIRs registered against the petitioner and third respondent were closed by the police as 'Mistake of Fact'. Only based on those FIRs, the first respondent decided that there is breach of peace in that locality. Since both the FIRs are closed as 'Mistake of Fact', there is no question of breach of peace in that locality. Since the revision petitioner has approached the civil Court and since the FIRs are closed as 'Mistake of Fact', the impugned order is liable to be set aside.



13. In view of the above, this Criminal Revision Case is allowed and the order passed in Na.Ka.No.A2/2694/2019 dated 03.06.2019 on the file of the first respondent is set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Sub Division Magistrate - Cum -Sub Collector,
Padmanabhapuram,
Thakkalai Post,
Kanyakumari District.

2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-9578[F] dated 09/03/2021)

+1 CC to M/s.I.PINAYGASH, Advocate (SR-9608[F] dated 09/03/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-9738[F] dated 09/03/2021)

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SSS(CO)
KB(29.03.2021) 4P 7C