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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 07/01/2021
Pronounced on : 19/01/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL.OP(MD)No.16140 of 2020

1.S.K.S.Sivayogi
2.S.K.S.Somasundaram
3.Karthikeyan
4.Sellamuthu
5.Maruthanayagam
6.Rathinam @ Rathinachalam ... Petitioners/Accused No.1 to 6

Vs

State Rep. by
The Inspector of Police,
Ottanchathiram Police Station,
Dindigul District.
(In Crime No.2389 of 2020). ... Respondent/Complainant

For Petitioner : M/s.Lawrance.J.,
Advocate.
For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl.Side)
For Intervener : Mr.S.Ravi, Advocate

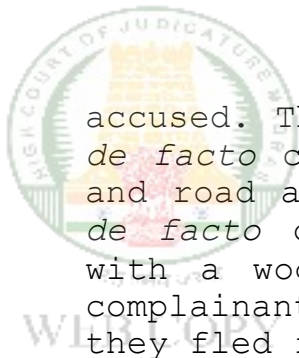
PETITION FOR ANTICIPATORY BAIL Under Section 438 of Cr.P.C

PRAYER :- For Anticipatory Bail in Crime No.2389 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners apprehending arrest at the hands of the respondent Police for the offences punishable under sections 447, 147, 294(b), 323, 324, 506(i) of I.P.C. in Crime No.2389 of 2020 on the file of the respondent Police, seek anticipatory bail.

2.The *de facto* complaint being a close relative of the 1st and 2nd petitioners, lodged a complaint before the Oddanchatram Police Station, Dindigul District, on 24.12.2020, stating that there is some family dispute between the *de facto* complainant and 1st and 2nd



accused. The petitioners herein had trespassed into the land of the *de facto* complainant and put up fencing by obstructing the pathway and road along with 70 others. When the same was questioned by the *de facto* complainant's husband they had abused and assaulted him with a wooden stick and when it was questioned by the *de facto* complainant and her sister-in-law, they were abused and attacked and they fled from the place of occurrence. Hence the complaint.

3.The contention of the petitioners is that on the side of the *de facto* complainant, a writ petition in W.P(MD)No.6893 of 2020 was filed, seeking Police protection and for survey and measurement of the lands comprised in Survey Nos.7/2B3, 8/2B, 9/3 and 9/4 to an extent of 1.285 Ares situated at Oddanchatram village and this Court by order, dated 21.07.2020 had directed both the *de facto* complainant and the accused to co-operate for the survey and measurement without creating any dispute.

4.Further it is submitted that there was a dispute with regard to the existence of the pathway and its usage, due to which, complaint and counter complaint have been lodged. The *de facto* complainant on his side lodged a complaint in CSR.No.166 of 2020 and on the side of the petitioners a complaint in CSR No.167 of 2020 was lodged before the respondent Police, who in turn, advised both the parties to approach the Civil Court and to abide by the order of the Court.

5.In this regard, the 1st and 2nd accused had filed a civil suit before the District Munsif, Oddanchatram in O.S.No.46 of 2020. The *de facto* complainant had entered appearance and had also filed an interlocutory application in I.A.No.208 of 2020, seeking appointment of an Advocate Commissioner, to oversee the survey and measurement. The contention of the petitioners is that the family partition had taken place in the year 1948 and in the said family partition, there is a mention about the 12 feet pathway and road, which was never available and put in use. This being the case, during the year 2019, the *de facto* complainant through a Will, had received the property. In the said Will, the passage has been mentioned and taking advantage of the same, now the problem has been created to lay a 12 feet pathway in Survey Nos.10/1 and 10/2. From the year 1948 there was no dispute among legal heirs of Sadagopa Pillai and thereafter, from the year 2019, the present problem has been created by the *de facto* complainant. It is an admitted fact that the legal heirs of the Sadagopa Pillai have independent access and passage to their lands and thus there is no necessity to create a pathway or road. This right is now being claimed, since the proposed pathway leads to the National Highways and whereby the value of the properties get enhanced and therefore, for the purpose future layout and for selling the property, the *de facto* complainant is making such a claim. The petitioners have resisted the same and going through the complaint, it is mentioned that 6 of the named accused along with 70

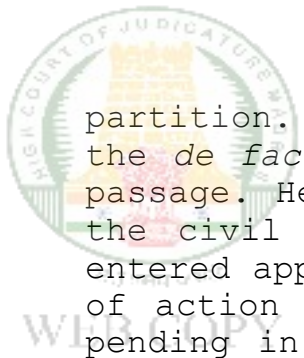


others entered into the land and had created obstruction and attacked the *de facto* complainant and her husband. Admittedly, the petitioners are the owners of the land and such being the case, there is no question of trespass and there is no existence of pathway or road as claimed by the petitioners. Further, it is also seen that another complaint during the month of August 2020 in CSR No.254 of 2020 was also lodged by falsely implicating these petitioners with an ulterior motive by the *de facto* complainant.

6.The learned Government Advocate (Crl Side) submitted that there exists a pathway dispute between the petitioner and the *de facto* complainant group. Earlier they had moved a writ petition before this Court seeking police protection and for survey and measurement of the lands in dispute and the said writ petition was also allowed by this Court. Further there are complaints and counter complaints by both groups with regard to the same and they were advised to approach the civil court to establish their rights and a civil suit is pending between both the groups in O.S.No.46 of 2020 before the District Munsif, Oddanchatiram.

7.Mr.S.Ravi, learned Counsel intervened and appeared for the *de facto* complainant and filed his typed set of papers stating that on the side of the *de facto* complainant a writ petition in W.P(MD) No.6893 of 2020 was filed, seeking for survey and measurement of the lands and though it was ordered, the petitioners did not co-operate for the same and hence, the survey and measurement is yet to be done. Further both groups were inherited the properties by the family partition in the year 1948. In the year 1948 family partition, the existence of the 12 feet pathway and the road is clearly mentioned. Thereafter, the *de facto* complainant's side had inherited the property by way of a Will in the year 2019. The right and usage of the road is established from the year 1948 and the petitioners are obstructing the same and are attempting to put up fencing, which was objected to by the *de facto* complainant's side and at that time they were abused and attacked. The petitioners had engaged muscle men to execute the work. The Police on earlier occasions had not taken any action, which emboldened the petitioners to commit the offence. In the civil suite in O.S.No.46 of 2020, on the side of the *de facto* complainant, an interlocutory application was filed, seeking appointment of an Advocate Commissioner to oversee the survey and measurement. The *de facto* complainant had been approaching the appropriate legal forum, whereas, the petitioners are using musclemen and are threatening and assaulting the *de facto* complainant.

8.Considering the rival submissions and on perusing the materials, it is seen that it is a civil dispute between the close relatives of the *de facto* complainant and as well as the petitioners, who had inherited the property. It is admitted that there is a mention about the pathway in the year 1948 family



partition. Thereafter, it has not been put up to use. After 2019, the *de facto* complaint on the strength of the Will is claiming the passage. Hence, the dispute. Already the petitioners had approached the civil Court and on the side of the *de facto* complainant had entered appearance. Under such circumstances, the appropriate course of action would be to await the outcome the civil suit, which is pending in O.S.No.46 of 2020, on the file of the District Munsif, Oddanchathiram.

9. In the view of the above, I am inclined to grant anticipatory bail to the petitioners.

(a) Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate, Oddanchathiram and on their executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall appear before the respondent police as and when required for interrogation. The petitioners shall comply with the conditions stipulated under Section 438 Cr.P.C scrupulously.

(b) the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(c) the petitioners shall report before the respondent police as and when required for interrogation.

(d) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(e) the petitioners shall not abscond either during investigation or trial;

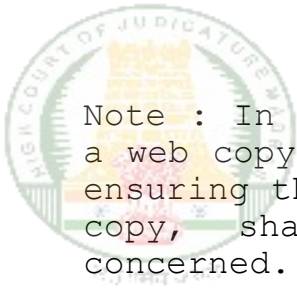
(f) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
19/01/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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.

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- TO
- 1 THE JUDICIAL MAGISTRATE,
ODDANCHATIRAM.
 - 2 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
DINDUGAL DISTRICT.
 - 3 THE INSPECTOR OF POLICE,
OTTANCHATHIRAM POLICE STATION,
DINDIGUL DISTRICT.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.LAWRANCE.J. Advocate SR.No.1051

ORDER
IN
CRL OP(MD) No.16140 of 2020
Date :19/01/2021

dsk
JM/VR/SAR III/19.01.2021/5P/6C