



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WEB COPY

Crl.MP(MD)No.3257 of 2022

in

Crl.OP(MD)No.17053 of 2021

Sithi Farina : Petitioner/3rd Respondent

Vs.

1.A.Jathijathu Ameena

2.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

3.The Inspector of Police,
Ervadi Police Station,
Ramanathapuram District.

: Respondents

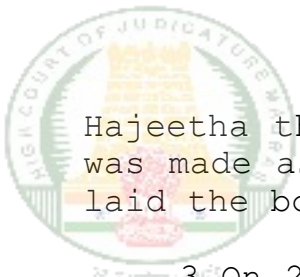
Prayer: Petition has been filed under section 482 of Cr.P.C., to recall the order passed in Crl.OP(MD)No.17053 of 2021, dated 02/11/2021 and to take action as against the 1st respondent and 25 others who indulged in illegal activities by violating the order passed by this court.

For Petitioners	: Mr.T.C.S.Thillainayagam
For 1 st Respondent	: Mr.G.Karuppasamy Pandian
For R2 and R3	: Mr.B.Nami Selvan
	Additional Public Prosecutor

O R D E R

The petition has been filed to recall the order passed in Crl.OP(MD)No.17053 of 2021, dated 02/11/2021 and action must be initiated against the first respondent and 25 others for violating the order passed by this court for their illegal activities.

2.Originally, the main criminal original petition was filed by the first respondent, directing the 3rd respondent to provide police protection to survey and fence the suit property in Survey Nos.385/1A2A and 385/1A2B measuring about 2 acres situated at Keelakarai village stating that she is the absolute owner of the property. Based upon the submission made by the first respondent and the learned Additional Public Prosecutor, finally that was disposed. Actually, the petitioner purchased the land in the above said Survey Nos.385/2A and 385/1C at Mayakulam Village, Keelakarai, measuring 1 acre 50 cents and 7 acres and 63 cents from Syed



Hajeetha through her power agent, on 01/12/1995. Later, subdivision was made as 385/2A2 and 385/1C2. After purchasing the property, she laid the boundary stones and fenced, also planted coconut trees.

3. On 28/12/2021 at about 7.00 am, the first respondent and her son along with 25 persons stating that they are Advocates, forcibly entered into the property and removed the boundary stones and fencing. When that was questioned, the 3rd respondent who was present in that place stating that order has been passed by this court. The copy was not shown to him. When the illegal activity was resisted, the petitioner was abused and criminally intimidated. They damaged the fencing and illegally occupied. A representation was made to the 2nd respondent in person. But there was no action. Later, after verification of the order passed by this court, it came to light that wrong information has been given to this court by the 3rd respondent, as if the petitioner has given an undertaking that she will not make any trouble during the course of survey or fencing the property. The 1st respondent by using the court order, has illegally got the police protection for the illegal activities. The entire events were photographed and videographed. So, this petition is filed to recall the order that has been passed in CrI.OP(MD)No.17053 of 2021, dated 02/11/2021.

4. Now the learned counsel appearing for the first respondent would submit that the prayer sought in this petition is not at all maintainable. According to him, his preliminary objection must be heard. So on that ground, both sides were heard.

5. Noting that there was some sort of mistake on the part of the 3rd respondent when hearing the main petition, the entire file was ordered to be produced by the learned Additional Public Prosecutor. In pursuance of the above said direction, the entire enquiry file is also produced.

6. The learned Additional Public Prosecutor would submit that even though, enquiry has been undertaken on the basis of the representation made by the first respondent, it has been mistakenly informed to the court that enquiry was undertaken, on the basis of the representation made by the first respondent in CP No.62549 of 2021. But actually the correct file is No.1528 of 2022.

7. Perusal of the entire file shows that it is a clear mistake on the part of the 3rd respondent informing the court that the enquiry was undertaken on 23/09/2021. Whether this caused the misrepresentation or wrong representation to the court, during the course of the above said enquiry that the petitioner herein has given an undertaking that she will not make any trouble during the course of measuring and fencing the property is not known.

8. It appears that because of the mistake, observation has been
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made by this court stating that this petitioner has given an undertaking that she will not make any trouble during the course of measuring the fencing the property.

9. The learned counsel appearing for the first respondent had submitted that within one month from the date of receipt of the order copy, they will complete the survey and fencing work.

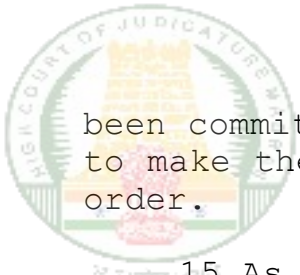
10. The learned Additional Public Prosecutor had submitted that if any trouble arises in future and if any necessity arises the 3rd respondent will provide police protection. But it is unfortunate to note that the first respondent was well aware of the nature of closure of the enquiry. Enquiry has been closed observing that the property under dispute is claimed upon by both parties. The first respondent claimed right over the property by way of purchase. Similarly, this petitioner has claimed right over the property through purchase. The petitioner has given a statement that the above said dispute will be resolved through the appropriate proceedings. So, this is the statement that has been given by the petitioner herein. But nowhere in the statement, she has stated that she will not make any trouble for surveying or fencing the property. Only based upon that, it was closed and the first respondent has also given an undertaking that she will measure the property by taking steps with the Head Surveyor of Ramanathapuram and she will not make any trouble to the petitioner.

11. It appears that the entire issue has been misunderstood by the 3rd respondent herein in making the statement settlement before this court.

12. Now the grievance of the petitioner is that by exploiting the order, that has been passed by this court, the first respondent with the help of the 3rd respondent trespassed into the property and occupied the same by demolishing the fencing. No doubt, a damage has been done, by misunderstanding the order that has been passed by this court. Absolutely, there was no positive direction passed by this court. It has recorded the statement made by the first respondent and the learned Additional Public Prosecutor, on instructions from the 3rd respondent.

13. As mentioned earlier, the first respondent raised a preliminary objection stating that the recall order will nothing, but criminal proceedings will amount to review of the order. That is the objection raised by the first respondent. I may the mind of the court to the fact that if there is any mistake on the part of the petitioner, the court in pursuance of wrong statement that has been made by the 3rd respondent, then it is the duty of the court to correct the mistake.

14. This court is a court of record. If any factual mistake has



been committed, while passing the order, this court is not powerless to make the corrections and that would have amount to review of the order.

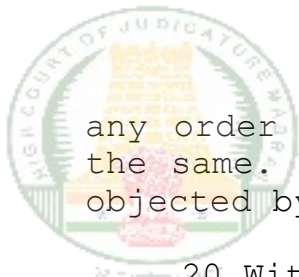
15.As mentioned earlier, no positive order has been passed by this court on merits. It has simply recorded the statement of the learned Additional Public Prosecutor and the first respondent and disposed the matter.

16.It appears that the order has been wrongly misunderstood by the third respondent and granted police protection, while fencing the property. The first respondent has also not stated anything in the petition about the nature of the closure of police enquiry. The first petitioner might have informed the court about the nature of the undertaking given by the petitioner before the enquiry officer. He remained silent and allowed the observation to be made by this court.

17.The learned counsel appearing for the petitioner would submit that the petitioner has not signed in any of the undertaking or the statement before the enquiry officer. But perusal of the file shows that the representation was received by the Superintendent of Police, Ramanathapuram, on 06/09/2021. That was forwarded to the 3rd respondent for enquiry and further action. But I find that no forgery has been committed by the 3rd respondent herein, even though the signature in the vakalat of the petitioner slightly differs from that of the signature found in the statement. There is no necessity for the 3rd respondent to forge the signature of the petitioner.

18.So in the facts and circumstances of the case, I am of the considered view that it is a mistake, which has been committed by this court, which is apparent on the basis of the record. When this mistake is apparent on the face of the records, as mentioned above, it is the duty of the court to correct the same. All the mischiefs have already been done. But that can be corrected only through appropriate legal process. So liberty may be granted to the petitioner to work out her remedy through legal process for removing the above said fence and work out her remedy through the civil process.

19.Regarding the action to be taken against the 1st respondent and others, the petitioner can work out her remedy through the appropriate proceedings and no order can be passed by this court in this petition. Because it is beyond the scope of this petition. It cannot be entertained. So subsequent to the above said fencing, the petitioner has given a complaint, which was also enquired in CP No.10 of 2022 and that was also closed. On the basis of the undertaking given by the first respondent and the petitioner. It was submitted that she fenced the property as per the order passed by this court and they did not make any illegal encroachment and if



any order is passed by any court, the 1st respondent will abide by the same. Based upon which, the complaint was also closed. This was objected by the petitioner.

20. With the above said observation, the order that has been passed in Cr1.OP(MD)No.17053 of 2021 by recording the submission made by the first respondent and the 3rd respondent stands recalled. The parties are directed to work out their remedy through appropriate proceedings in the manner to known to law.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

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 Superintendent of police,
Ramnathapuram District,
Ramanthapuram.
2. The Inspector of Police,
Ervadi Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai

+1CC to Mr.C.VAKEESWARAN, advocate, Sr.No. 3911 dated 27.04.2022

Cr1.MP (MD)No.3257 of 2022
in

Cr1.OP (MD)No.17053 of 2021
27.04.2022

AC (CO)

KB(06.05.2022) 5P 6C

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