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CrI.O.P.No.17592 of 2021 and Cont.P.No.285 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.17592 of 2021 and
CONT.P.No.285 of 2020 and CrI.M.P.No.9662 of 2021

CRL.O.P.No.17592 of 2021

1. M.Perumal
2. P.Jothi
3. P.Anandhbabu
4. P.Aravind

... Petitioners

Vs.

1. The Director General of Police,
Mylapore,
Chennai-600 004.
2. The Superintendent of Police,
Salem District,
Salem.
3. The Deputy Superintendent of Police,
Attur,
Salem District.
4. A.Immanuel Gnansekar
The Deputy Superintendent of Police,
Attur,
Salem District.
5. The Inspector of Police,
Attur Town Police Station,
Attur Taluk,
Salem District.

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Cr.No.325 of



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2021 on the file of the 5th respondent and quash the same.

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For Petitioners

: Mr.S.Doraiswamy

For Respondents

: Mr.A.Gopinath,
Government Advocate(crl.side)

CONT.P.No.285 OF 2020

P.Jothi

... Petitioner

Vs.

1.A.K.Prakash

Tahsildar,

Attur.

2. Raju,

Deputy Superintendent of Police,

Attur.

3.Deputy Tahsildar(PA to RDO),

Attur,

Salem District

(R3 impleaded as per order dated 21.02.2020

made in Sub Appln.(OS)No.189 of 2020 in

Cont.P.No.285 of 2020

... Respondents

PRAYER: Contempt petition is filed under Section 11 of the Contempt of Courts Act for the willful disobedience of the orders of this Court passed in W.P.No.21260 of 2019 dated 23.10.2019 under the provisions of Contempt of Courts Act.

For Petitioner

: Mr.S.Doraiswamy

For Respondents

: Mr.A.Gopinath,
Government Advocate (Crl.Side)



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COMMON ORDER

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The criminal original petition has been filed to quash the the FIR in Cr.No.325 of 2021 on the file of the 5th respondent registered for the offences under Section 4(1)(aaa) and Section 24 of TamilNadu Prohibition Act and Section 269 of IPC.

2. The case of the prosecution is that the petitioners were illegally selling the liquor in a restaurant called "Sri Kumaran Restaurant Naatukozhi Manpanai Samayal". All the petitioners are family members i.e., husband, wife and sons. The 5th respondent received information about illegal sale of the liquor by the petitioners. Immediately, after informing the same to the higher officials, the 5th respondent and its team went to the place of occurrence and seized liquor bottles. It occurred on the time of Covid-19 pandemic situation and as such, the 5th respondent registered FIR for the offences under section 4(1)(aaa) and Section 24 of Tamilnadu Prohibition Act and section 269 of IPC r/w.51(1)(b) of the Disaster Management Act 2005.

3. The 2nd petitioner owned land comprised in S.No.122/2A of Narasingapuram Village, Attur Taluk. It is a patta land and issued patta in



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Patta No.1133. When she decided to construct a compound wall, the Bar

Association of Attur Court objected the construction of compound wall on the ground that the 2nd petitioner encroached the Mayanam property comprised in S.No.122/8. Therefore, the 2nd petitioner filed a Writ Petition before this court in W.P.No.21260 of 2019 seeking to provide police protection. This court vide order dated 23.10.2019 had directed the Deputy Superintendent of Police, Attur to provide adequate police protection to the 2nd petitioner after seeking assistance of a surveyor for the purpose of identifying for earmarking the land comprised in S.No.122/2A. Accordingly, the land was surveyed on 21.11.2019. Thereafter, she started the construction of compound wall in the presence of police officials. However, police protection was withdrawn and she was directed to meet the Deputy Tahsildar. They demanded to convey 3000 Sq.ft to the authorities concerned, only thereafter permission will be granted for put up construction. Therefore, the 2nd petitioner filed a contempt petition before this court in Contempt Petition No.285 of 2020 for non compliance of the order passed in W.P.No.21260 of 2019. While pending contempt petition, the 2nd petitioner could not able to construct due to Covid-19 pandemic situation. Therefore, this court directed the police authority to provide adequate police protection whenever the petitioner intends to put up



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construction. While being so, the 5th respondent registered the present impugned FIR on the above said allegation. Even according to the prosecution, the persons who were consuming liquor in the Sri Kumaran Restaurant Nattukoli Manpanai Samayal and not within the premises of 2nd petitioner. Further, the said hotel is not run by the petitioners. Therefore, the above said FIR has been registered only in order to wreak vengeance as against the petitioners and nothing else. It is clear abuse of process of law. Therefore no offences are made out and the FIR has been registered in pursuant to the filing of contempt petition as well as the interim direction issued by this court.

4. That apart, the FIR has been registered during Covid-19 pandemic circumstances. Hence, it cannot be sustained for further investigation and liable to quashed. Accordingly, the entire proceedings in Cr.No.325 of 2021 on the file of the 5th respondent is quashed and the Criminal Original Petition in Crl.OP.No.17592 of 2021 is allowed on condition that the petitioners shall remove the illegal construction put up in the land in S.No.122/2A admeasuring 0.1103.0 sq.meter forthwith. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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5. The Contempt Petition in Cont.P.No.285 of 2020 has been filed for the willful disobedience of the orders of this Court passed in W.P.No.21260 of 2019 dated 23.10.2019.

6. On perusal of the counter filed by the Revenue Officer i.e., The Tahsildar, Attur reveals that whenever the petitioner intended to put up construction in her patta land, the police officials are ready and willing to give police protection. That apart, as per the survey, the Assistant Director of Survey Department submitted his report dated 26.09.2020. As per the report, the petitioner in the contempt petition has constructed compound wall encroaching the land ad measuring is 0.1103.0 sq.meter of land comprised in S.No.122/8 and have constructed compound wall along with S.No.122/2A. Therefore, the District Collector, Salem passed an order dated 26.11.2020 to remove the encroachment thereby directed the Revenue Divisional Officer, Attur to remove the encroachment of the petitioner in S.No.122/8 immediately and submit report. Accordingly, in pursuant to the order passed by the District Collector, Salem, the Tahsildar, Attur passed an order to Revenue Inspector, Attur to issue notice under section 7 of the Tamilnadu Land Encroachment Act, 1905. However it was refused to receive by the petitioner and as such they are now taking steps to remove the encroachment put up by the petitioner.



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7. The learned counsel for the petitioner submits that if at all any construction put up by the petitioner, the petitioner is ready and willing to remove the construction.

8. In view of the above, no contempt is made out as against the respondents. Accordingly, the contempt petition in Cont.P.No.285 of 2020 is dismissed. The revenue authorities i.e., the District Collector, Salem, the Revenue Divisional Officer, Attur and the Tahsildar, Attur are directed to remove the encroachment of the petitioner in the land in S.No.122/2A ad measuring 0.1103.0 sq.meter forthwith and submit a report before the District Collector, Salem as directed. It is also made clear that the direction issued by this court in W.P.No.21260 of 2019 is not an impediment for the revenue officials to proceed with the removal of encroachment by the petitioner in S.No.122/2A ad measuring as 0.1103.0 sq.meter.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

lok/gvn



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G.K.ILANTHIRAIYAN, J.

lok/gvn

To

- 1.The Director General of Police,
Mylapore,
Chennai-600 004.
2. The Superintendent of Police,
Salem District,
Salem.
3. The Deputy Superintendent of Police,
Attur,
Salem District.
4. The Inspector of Police,
Attur Town Police Station,
Attur Taluk,
Salem District.
- 5.A.K.Prakash
Tahsildar,
Attur.
6. Raju,
Deputy Superintendent of Police,
Attur.
- 7.Deputy Tahsildar(PA to RDO),
Attur,
Salem District
- 8.The Public Prosecutor,
High Court of Madras.

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