



Crl.O.P.(MD)No.11998 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 27.07.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.11998 of 2022

and

Crl.M.P.(MD) No.7581 & 7583 of 2022

1. V.Ganthi
2. M.Sangaran
3. C.Ponnaiya
4. P.Murugaraj
5. K.Anthoyraj
6. P.Sanmugaiya
7. M.Chandran
8. A.Anandraj
9. P.Mathiyalagan
10. M.Arujunan
11. A.Amalraj
12. K.Jeyaraj

... Petitioners

Vs.



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1. The Sub Divisional Magistrate,
and Revenue Divisional Officer,
Revenue Divisional Officer, Tenkasi,
Tenkasi District.

2. The Sub Inspector of Police,
Chinnakovilankulam Police Station,
Tenkasi District.

3. P.Kottursamy

4. D.Kottursamy

5. A.Ganthiraja

6. A.Kottursamy

7. C.Prem Raj

8. K.Karthick

9. V.Kottaisamy

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in Na.Ka.No.A2/3807/M.C.B.19/107/2022 dated 22.06.2022 on the file of the Sub-Divisional Magistrate cum Revenue Divisional Officer, Tenkasi and quash the same as against the petitioner.

For Petitioner : Mr.D.Rajaboopathy

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed questioning the proceedings in Na.Ka.No.A2/3807/M.C.B.19/107/2022 dated 22.06.2022 issued by the first respondent/ Sub Divisional Magistrate-cum-Revenue Divisional Officer.

2. This petition is filed challenging the summons issued in favour of 'A' and 'B' party *vide* proceedings Na.Ka.No.A2/3807/M.C.B.19/107/2022 dated 22.06.2022. According to the respondent police, about 40 persons of Thevar community and 120 people of Devendra Kula Vellalar community are living in Chinnakovilankulam village for centuries together by worshiping at Karuppasamy Temple. When the Devendra Kula Vellalar community people tried to worship Karuppasamy Temple with Public Address System (Mike system) and electricity connection were removed by other group people, aggrieved by the same, the Devendra Kula Vellalar community have protested from 12.05.2022 to 14.05.2022 demanding for installing public sound system and to restore electricity connection to the said temple.



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3. A person representing the Devendra Kula Vellalar community sent a representation by way of registered post on 26.05.2022 to the police stating that the people belonging to Devendra Kula Vellalar community are prevented from using the public address system and electricity connection. Sensing that community/caste tension may escalate, police have immediately conducted a peace committee meeting at 3:00 p.m. which was attended by the people of both the communities and they have agreed to resolve their issues amicably.

4. One Kottursamy of Thevar community has filed W.P.No. 11043 of 2022 on the file of this Court seeking police protection and same was granted on 09.06.2022 to 11.06.2022. Subsequently, the temple was locked by Thevar people and sensing the situation as sensitive, one more peace committee meeting was held on 03.08.2022 and since there was a possibility of community riot, *suo motu* FIR has been registered under Section 145 of Cr.P.C. and same is under challenge by the petitioners.



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5. Section 145 of the Code of Criminal Procedure runs as

under:-

“(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression land or water includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks



necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.



(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107."



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6. Chapter X of Cr.P.C. deals with maintenance of public order and tranquility under which Executive Magistrates are expected to exercise the powers under various sections to maintain public order and tranquility on the advice of the police. Even if a person, one group or groups commits breach of peace, the Executive Magistrate will exercise the powers by initiating proceedings under various Sections of Chapter X.

7. Section 145 of Cr.P.C. can be clamped whenever Executive Magistrate is of the opinion that a dispute in respect of law and order is likely to cause breach of peace, he can initiate proceedings under Section 145 of Cr.P.C. Leaving aside whether dispute between the two communities in Chinnakovilankulam village in respect of issues with regard to worshipping in the temple falls within the ambit of Section 145 of Cr.P.C. or not, the police should not have registered FIR under Section 145 of Cr.P.C. as it was enacted to maintain and regulate peace and tranquility in the society and erring parties will be directed to execute the bond and may also be directed to approach the civil Court.



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8. Section 154 of Cr.P.C. mandates the Investigating Officers to issue First Information Report in case if any cognizable offence takes place. The respondent herein has issued FIR contrary to Section 154 of Cr.P.C. as if section 145 of Cr.P.C. is a penal provision thereby FIR cannot be issued under Section 145 of Cr.P.C. This Court *vide* its order dated 27.07.2023 in Crl.O.P.(MD) No.19859 of 2022 has quashed the FIR registered under Section 145 of Cr.P.C.

9. Considering the above discussions, the FIR and summons issued consequently to FIR are required to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings in Na.Ka.No.A2/3807/M.C.B.19/107/2022 dated 22.06.2022 including FIR in Crime No.120 of 2022 dated 21.08.2022 are quashed. Consequently, the connected miscellaneous petitions are closed.

27.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Sub Divisional Magistrate,
and Revenue Divisional Officer,
Revenue Divisional Officer, Tenkasi,
Tenkasi District.
2. The Sub Inspector of Police,
Chinnakovilankulam Police Station,
Tenkasi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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DR.D.NAGARJUN,J

PKN

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