

COURT OF DISTRICT MAGISTRATE

PUDUCHERRY

DATED 31.10.2016

M.C. No.150/2016

SHO, Mangalam

.....

Petitioner

Vs.

Nithiyantham @ Nithi

S/o Krishnaraj,

Thirukanji, Puducherry.

.....

Counter Petitioner.

1. This petition along with case sheet filed by SHO, represented by A. Govindarajan, S.I., Investigation Officer, Mangalam P.S, praying to pass orders U/S 144 Cr.P.C against Thiru. Nithiyantham @ Nithi to prevent imminent danger to human lives and properties and disturbance to the public tranquillity and order in the jurisdiction of this court.

2. The facts which led up to the petition are briefly as follows: The case referred by the Mangalam PS, vide IR No.24/2016 dated 23.09.2016, that the counter petitioner is a notorious rowdy element habitually involved in offences such as murder, extortion, robbery, intimidation and thus cause breach of peace and disturb the public tranquillity. The Station House Officer, Mangalam PS has laid information on the Criminal and Preventive cases registered against the Counter Petitioner in various Police Stations of Puducherry and Tamil Nadu which are listed below

- a) Cr. No.366/2K u/s. 341,324 IPC r/w. 34 IPC @ 341, 324, 326, 323 r/w. 34 IPC Dt. 26.10.2000 of Villianur PS
- b) Cr. No. 179/01 u/s.323, 324 IPC @ 326, 324, 323 IPC r/w. 34 IPC @ 302 IPC r/w. 34 IPC of Villianur PS
- c) Cr. No. 411/01 u/s. 107 Cr. P.C Dt. 23.10.01 of Villianur PS
- d) Cr. No.665/04 u/s. 379 IPC Dt. 09.12.2004 of Villianur PS
- e) Cr. No.63/06 u/s. 341, 323, 324, 506(II) r/w. 34 IPC Dt. 14.02.2006 of Villianur PS
- f) Cr. No. 73/2009 u/s. 107 Cr. PC Dt. 20.02.2009 of Villianur PS
- g) Cr. No. 26/2009 u/s. 31(a)(f)(h), 33, 37-A & 38 of Pondicherry Excise Act 1970 & 1989 Dt. 07.10.2009 of Excise PS Puducherry
- h) Cr. No.615/2009 u/s. 120(b), 147, 148, 341, 324, 323, 307 IPC and Sec. 3 & 4 of Explosive Substances Act r/w. 149 IPC Dt. 06.11.09 of Thusi PS
- i) Cr. No. 930/09 u/s. 147, 148, 353, 307, 506(II) IPC r/w. 3 & 4 of Explosive Substance Act -1908 and 25(1)(a) of Indian Arms Act Dt. 06.11.09 of Seyyar PS
- j) Cr. No. 263/2010 u/s. 107 Cr. PC Dt. 28.06.10 of Villianur PS
- k) Cr. No. 413/2010 u/s. 144 Cr. PC Dt.23.09.2010 of Villianur PS
- l) Cr. No. 03/11 u/s.110 Cr. PC Dt. 08.03.2011 of Mangalam PS
- m) Cr. No.13/11 u/s. 144 Cr. PC Dt. 16.03.2011 of Mangalam PS
- n) Cr. No.159/11 u/s. 332, 307 IPC r/w. 34 IPC of Villianur PS Dt. 25.04.2011
- o) Cr. No. 98/11 u/s. 144 of Cr. PC Dt. 10.09.2011 of Mangalam PS



- p) Cr. No. 134/11 u/s. 188, 452, 506(II) IPC & 27 of Arms Act 1954, Dt.11.10.11 of Mangalam PS
- q) Cr. No.61/2012 u/s.302, 324 IPC & 3 of Explosive Substance Act r/w.34 IPC @ 147, 148, 302, 324 IPC & Sec. 3 of Explosive substance Act r/w. 149 IPC Dt. 21.04.2012 of Mangalam PS
- r) Cr. No.110/2012 u/s. 120(b), 147, 148, 341, 307 IPC and Sec.3 & 6 of Explosive Substance Act 1908 of Aacharapakkam PS
- s) Cr. No. 146/2015 u/s. 304 A IPC @ 302 IPC r/w. 34 IPC of Thirunavaloar PS

3. Petitioner has stated that he has received reliable information that the Counter petitioner is desperate and in dire need of money to maintain his group of rowdy elements and to meet expenses in connection with the trial pending criminal cases against him. Petitioner also submitted that in order to meet the monetary requirements the Counter petitioner is hatching plans to threaten the business people in Uruvaiyar and its surrounding area for extorting money from them. He has thus become imminent danger to human lives and properties and disturbance to the public tranquillity and order. He has therefore, prayed to pass orders against the counter petitioner under section 144 of the Code of Criminal Procedure, 1973.

4. At this juncture the rulings of Hon'ble High court of Chennai judicature in CrI R.C. No. 677 of 2015 dated 13.07.2015 between the Laloo @ Lemon Anandaraj Vs. District Magistrate, Puducherry in which it was directed by the Hon'ble HC that the District Magistrate should serve the notice and follow the principles of the natural justice before passing any orders.

5. Apart from this few points has been enumerated by the Hon'ble Supreme court and High court in other judgements, which has justified the constitutionality of section 144 of Cr.P.C. They may be listed as follows.

a) Although the Magistrate has a power under this section to pass orders ex-parte, however generally the procedure that is followed is to serve a notice to the person against whom the order is being passed. Only in cases of extreme critical situations that the Magistrate has to resort to passing an ex-parte order.

b) Additionally, the persons aggrieved by the order have a right to challenge the order on the grounds they find appropriate. This supports the view that the power granted under this section is not arbitrary.

c) To substantiate the above, an opportunity for hearing and to show cause is also provided to the person challenging the order of the Magistrate. Therefore, the principles of natural justice are also complied with under this section.

d) Next the court also stated that the fact that the aggrieved party has the right to challenge the propriety of the order, makes the action of the Magistrate more reasonable and based on cogent reason.



5. A Notice, dated 10.10.2014, was served to both the petitioner and counter petitioner to appear before this court on 14.10.2016 at 3.20 P.M. For the petitioner's side Thiru. S. Chandrasegaran (PC 2521), Mangalam PS received the notice and for the Counter Petitioner's side Thiru. Ramanathan, brother of the Counter petitioner received the notice.

6. Both the parties were present for hearing on 14.10.2016. For Petitioner Thiru. A. Govindarajan, S.I of Police, Mangalam PS appeared and Counter petitioner Thiru. Nithyanantham @ Nithi was represented by learned Counsel Thiru. A. Sivacoumar. He has filed a Memo for Appearance on 14.10.2016. I have heard both the parties and perused the records placed in file.

7. The learned counsel appearing for the counter petitioner contended that all the cases are pending trial before the court and further stated that the counter petitioner is working as a driver for a doctor at Chidambaram. He also stated that the counter petitioner is not residing in the Puducherry District.

8. Countering the statement of the learned counsel, for the counter petitioner, the petitioner, the Station House Officer, submitted that the Counter petitioner, though working as a driver at Chidambaram, comes to his residence daily at night and is involving in activities that would cause imminent danger to the human lives, property and public peace. He also became disturbance to public tranquility. He also submitted that he has received reliable information that, on 23.09.2016 at 18.30 hours, the counter petitioner and his associates had involved in katta Panchayat and collecting mamul in Uruvaiyar area. In this regard he has submitted the entries made in General Dairy vol No.32, at page No.19 vide SI No.1 on 23.09.2016 at 10.30 hrs.

9. The Provision laid down under Section 144 in The Code Of Criminal Procedure, 1973 are as hereunder:

Section 144. Power to issue order in urgent cases of nuisance of apprehended danger.

(1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.



(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

10. Beside the original provision of code, on various occasions various guidelines have been already laid down by Hon'ble High Court and Hon'ble Supreme Court in different judgements and in Amar Chand Baid case it was observed that

"From perusal of the said Section 144, in my view, it is necessary that the Magistrate should be satisfied on the basis of the materials on record and should pass an order directing any person to abstain from doing certain act, if the Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray, learned Magistrate should record his satisfaction in his order to that effect".

11. In the case of Raj Kumar Rawal v. MadanGopalRawla and Ors. the same question relating to jurisdiction of the Magistrate in passing an order under Section 144 Cr. P.C., again came up for consideration. The Learned Single Judge of this court in paragraph-4 of the said judgment observed that the first thing which a Magistrate has got to be satisfied about is that there is sufficient ground for proceeding under this Section and an immediate prevention or speedy remedy is desirable, and the Second element which has got to be established is that the magistrate should consider that the direction which he is about to give, is one which is likely to prevent or tends to prevent obstruction annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or an affray. The Magistrate must decide as a matter of fact whether the dispute is likely to



lead to a breach of the peace or a disturbance of public tranquillity. The Magistrate must state in the order, the material facts by reason of which he was making the order thereunder.

14. I have perused the FIR submitted by the petitioner and observe that 19 cases have been so far filed against the counter petitioner in various criminal and preventive cases. Out of the 19 case 7 cases are preventive cases in which the Counter petitioner was discharged in all the 7 preventive cases. As far as criminal cases is concerned 2 cases viz., Cr. No.366/2000 and Cr. No. 179/01 cases ended in acquittal and 10 Cases are pending trial. It is also seen that the cases were filed under various sections of IPC relating to serious offences like Theft, Wrongful restraint, Voluntarily causing hurt, Voluntarily causing hurt by dangerous weapons or means, Criminal Intimidation, Acts done by several persons in furtherance of common intention, Criminal Conspiracy, Rioting, Rioting armed with deadly weapon, Attempt to murder, Assault or criminal force to deter Public Servant from discharge of his duty, Voluntarily Causing hurt To deter public servant from his duty, Disobedience to order duly promulgated by Public Servant, House-Trespass after preparation for hurt, Assault or wrongful restraint, Murder, Culpable homicide not amounting to Murder.

15. Due consideration was given to ruling made by the Hon'ble Supreme court and Hon'ble High Court. The petitioner and Counter petitioner were summoned and heard. The submissions made by the learned counsel for Counter petitioner did not supported the claim that the counter petitioner is not residing in the locality. Further, it is seen that the counter petitioner is involved in various heinous crimes and the related cases are pending trial before various criminal courts of Puducherry and Tamil Nadu State. The entries made in General dairy regarding his involvement in katta Panchayat proves that the counter petitioner is residing in the locality and still active in carrying out his criminal activities. The Crimes such as Rioting, Rioting with deadly weapon, Murder, Causing hurt, Voluntarily causing hurt by dangerous weapons or means, Attempt to murder, Assault or criminal force to deter public servant from discharge of his duty, Disobedience to order duly promulgated by Public Servant, House-Trespass after preparation for hurt, Assault or wrongful restraint would definitely cause disturbance to the public peace, tranquillity and order. The cases are still pending trial and hence the degree of involvement of the Counter petitioner in the said cases is still under question before the court of law. In view of the above circumstances I am of opinion that there exist sufficient grounds to proceed with the section 144 of Code of Criminal Procedure, 1973.

Hence, I DR SATYENDRA SINGH DURSAWAT I.A.S, do hereby, in the capacity of District Magistrate, Puducherry after servicing the notice as mentioned under section 134 Cr.P.C and after giving due opportunity of hearing to the counter petitioner, in



exercise of powers conferred under Code of Criminal Procedure prohibit, the counter petitioner Thiru Nithyanantham @ Nithi S/o Krishnaraj residing at No.30, Main Road, Thirukanji, Puducherry, under section 144 of Cr.P.C from entering into the Puducherry District for a period of two months from the date of this Order or till any further orders are passed by the Competent Authority revoking this prohibition as per law, whichever is earlier except when you are summoned to attend the cases in any of the Courts in Puducherry. However, you may represent against this order before the undersigned by post or by counsel.

At Puducherry Dated on this the 31st day of October, 2016 pronounced in the open court.



Satyendra Singh Dursawat
31/10
(DR SATYENDRA SINGH DURSAWAT, I.A.S)
DISTRICT MAGISTRATE

Copy to:-

1. The Sub-Divisional Magistrate (North), Puducherry.
2. The Sub-Divisional Magistrate (South), Villianur.
3. The Joint Secretary to Govt. (Home), Puducherry.
4. The Supdt. of Police (North)/(South)/(Rural), Puducherry.
5. The Station House Officer, ^{Marsulam} Mettupalayam Police Station, Puducherry
6. The PS to His Excellency the Lt. Governor, Puducherry.
7. The PS to Hon'ble Chief Minister, Puducherry.
8. The PS to Chief Secretary, Puducherry.
9. Thiru Nithi @ Nithyanantham S/o Krishnaraj residing at No.30, Main Road, Thirukanji, Puducherry.
10. The District Magistrate, Cuddalore for information.

OFFICE OF THE	
SUPDT. OF POLICE (WEST)	
NO. <i>Relaxed</i>	
Dated.....	<i>P. Reston</i>

02/11/16

