

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937Q

Crl.Rev.Pet.No. 1002 of 2015 ()

(AGAINST THE ORDER/JUDGMENT IN MC 23/1974 of SUB DVL.MAGISTRATE,THRISUR
DATED 07-08-2015)

REVISION PETITIONER(S)/B PARTY:

FR.K.P.ISSAC,
S/O. PAULOSE, KANDATHIL PUTHANPURAYIL, KANNARA
PEECHI VILLAGE, THRISSUR TALUK, PIN -680 652.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.AJAY BEN JOSE

RESPONDENT(S)/A PARTY:

1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. C.K. KURIAKOSE,
S/O. VARU, CHEMMANNOOR HOUSE, CHELAKKARA P.O.
THRISSUR - 680 586.

3. FR. THOMAS NEDIYAPALAKKAD,
S/O. PAULOSE, VAZHANI P.O., VIRIPAKKA VILLAGE
THALAPPILLY TALUK.

RADDL. BY ADV. SRI.T.KRISHNANUNNI (SR.)
RADDL. BY ADV. SRI.P.K.MOHANAN(PALAKKAD)
R2 BY ADV. SRI.P.VISWANATHAN
R2 BY ADV. SRI.SUNIL N.SHENOI
RADDL BY ADV. SRI.K.J.KURIACHAN
RADDL BY ADV. SRI.SUNIL JACOB
R BY PUBLIC PROSECUTOR M.G.LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
17/9/2015 THE COURT ON 30-11-2015, PASSED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.R.P. No. 1002 of 2015

Dated this the 30th day of November, 2015

O R D E R

The 'B' party in M.C.No.23/1974 of the Sub Divisional Magistrate, Thrissur, aggrieved by the order dated 7/8/2015 has approached this Court in revision.

2.The dispute related to St.George Church,Chelakkara, regarding the rights and possession of which, two factions of Malankara Church, viz.Patriarch and Orthodox faction, raised rival claims. Holding that the dispute has resulted in a breach of peace in the locality, the then Sub Divisional Magistrate (SDM) invoked the provisions under Sections 145 & 146 of Cr.P.C. and by order dated 19/10/1974 attached the property. The village officer was appointed as the receiver. It is admitted by both parties that while so, both factions were permitted to conduct religious ceremonies on different timings on all Sundays and other important dates of religious importance. In the meanwhile, O.S.No.217/1985 was filed before the Sub Court, Thrissur

by B party (Orthodox faction) seeking a declaration that the Church was to be governed by 1934 Constitution of Malankara Orthodox Syrian Church. The case was thereafter withdrawn and transferred to the First Additional District Court, Ernakulam, the special court constituted for hearing such disputes and numbered as O.S. No.18/1986. The suit was dismissed on the ground that it related to the administration of a public religious trust and the suit was instituted without obtaining leave under Section 92 C.P.C. The suit was held to be bad in law and not maintainable. This was carried in appeal as RFA No.782/2010 before this Court, which by judgment dated 17/6/2015 confirmed the finding of the Additional District Court.

3. Pursuant to the dismissal of the appeal, the defendants, who are the 'A' party (Patriarch faction) in the proceedings before the SDM, appears to have moved a petition before that authority informing about the dismissal of the RFA, that there was no case pending against them and that the civil proceedings have been dismissed as

against the B party. They sought for handing over the possession of the church and the properties to the A party. The SDM seems to have sought a legal opinion from the District Government Pleader, who opined that there was no bar in handing over the Church, in the light of the dismissal of the RFA. By the impugned order, the SDM withdrew the attachment order and the village officer was directed to handover the possession to A party.

4. Aggrieved by the impugned order, the B party has approached this Court contending that the impugned order is illegal, per se not sustainable and is in gross violation of the provisions under Sections 145 and 146 of the Cr.P.C.

5. Heard the learned senior counsel for the B party, learned counsel for the A party as well as the learned Public Prosecutor. It was submitted by both sides that the order was effected and the possession is now with the A party. Examined the records.

6. It is an admitted fact that the SDM had issued order under Sections 145(1) and 146(1) of Cr.P.C. and that it had been in existence since 1974. Section 145(1) of the

Cr.P.C. contemplates an action by the Sub Divisional Magistrate in a case of apprehended breach of peace and to pass orders under Section 145(1) directing the disputants to appear and to submit their rival claims. Section 146(1) of the Cr.P.C. enables the Sub Divisional Magistrate to order attachment of the disputed property in appropriate cases and to appoint a receiver till the disputes and the rights of the rival parties are determined by a competent court. After passing such an order, Section 145(4) postulates an enquiry. Different situations are contemplated under Section 145. The first one is the situation wherein the authority hold that no dispute was apprehended or existed and if so, it is empowered to cancel the order under Section 145(5) of Cr.P.C. The next situation is one wherein he finds that one party has been forcefully and wrongfully dispossessed within a period of two months before the date on which the report was received under Sub Section (1) and in such a case, invoking the power under Section 145(6), the possession can be restored to that party and appropriate order to be passed

to maintain the possession. On the other hand, Section 146 (1) contemplates a situation wherein an emergent action is liable to be taken and in appropriate cases, as contemplated under Section 146, an order of attachment can be passed and he has to decide thereafter as to who is the party entitled to be in possession. In case he decides that none of the parties was then in possession, as referred to under Section 145, or if he is unable to satisfy himself as to which of them was in possession of the subject of the dispute, he may attach the subject matter of the dispute till competent court determines the rights of the parties with regard to the party entitled to possession. Evidently, in such a case, the parties are relegated to a civil proceedings and till the rights of the parties are so determined, the receiver is entitled to continue possession or unless the Magistrate withdraws the attachment on a finding that there is no longer any likelihood of breach with regard to subject of dispute, invoking provisions of Section 146(1) of Cr.P.C.

7. The learned senior counsel for the revision

petitioner relying on the decision in **Jhummamal v. State of M.P.** {(1988) 4 SCC 452) contended that the impugned order is not legally sustainable. In the above decision, it was held that Section 145 Cr.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. Hence, the unsuccessful party, therefore, must get relief only in the civil court and it has to move the civil court in a properly constituted suit. He may hence file a suit for declaration and prove a better right to possession. In **Ashok Kumar v. State of Uttarakhand** {(2013) 3 Supreme Court Cases 366}, the Hon'ble Supreme Court held that :

“Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 Cr.P.C. It can only be read in the context of Section 145 Cr.P.C. If after the enquiry under Section 145 of the Code, the

Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof.

10. The ingredients necessary for passing an order under Section 145(1) of the code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment”.

The scope of the power of SDM under Sections 145 and 146 was considered by this Court in **Shameel N.A. And another v. Muhammed Ansari and others** (2014 (4) KHC 217.

8. Once proceedings under Section 145 and 146 are initiated, it can culminate only on a finding of civil court

regarding the right of person entitled to hold possession or the SDM determining the person holding possession on the relevant date or on a finding that breach of peace no longer exists. Both the provisions involve conducting enquiry. The impugned order indicates that the possession was handed over to A party only on the ground that the proceedings initiated by the B party have been dismissed in favour of the A party. It is clear that though the suit was dismissed and the appeal was also dismissed, it was essentially on a finding that the suit was not properly instituted. No finding regarding the right of the parties have been arrived at by the civil court as contemplated under Section 146(1) Crl.P.C. In other words, dismissal of the RFA confirming the dismissal of the suit was on a legal ground regarding the maintainability of the suit, without determination of the rival claims of the parties over the subject matter. Hence, it is evident that the order passed by the SDM that the suit was dismissed in favour of the A party as against the B party enabling them to hold possession is not correct.

9. Evidently, after invoking powers under Sections 145 and 146 of the Crl.P.C. status quo was prevailing in the light of the pendency of the proceedings before the competent Civil court. Hence, admittedly no enquiry under Section 145(4) was conducted by the SDM or a finding arrived at. In the above circumstances, in the absence of finding by the civil court regarding the rival claims of parties on the subject matter and the dismissal of the suit on a preliminary legal ground, what was statutorily expected from the SDM was to continue forward with the proceedings in accordance with Section 145(4) of the Cr.P.C. Evidently, no such enquiry was conducted. It is also pertinent to note that the B party had appeared. It is not clear as to whether any objections were filed by them. However, it is further evident that while passing the impugned order, no notice was given to the B party and they were also not heard. The impugned order is hence bad and is not legally sustainable on ground of the breach of principle of natural justice.

10. It is also pertinent to note that the impugned

order is bad for yet another reason. It appears that the SDM had called for the legal opinion from the District Government Pleader, who opined that there was no legal bar in the handing over of the possession to the parties. Evidently, the impugned order was passed on that opinion, without a proper application of mind by the SDM, which is patent from the impugned order itself.

11. In the light of the above finding that the impugned order is not legally sustainable and is liable to be set aside. In the light of the fact that suit, which was pending, has come to an end, necessarily, the Sub Divisional Magistrate will have to proceed in accordance with the provisions of Sections 145 and 146 of the Cr.P.C. and to pass fresh orders in accordance with law. Necessarily, the status quo, as it existed prior to the impugned order, has to be restored. This will imply that all the directions in relation to the church and in existence as on the date of passing the impugned order shall stand restored to enable the SDM to pass appropriate orders in accordance with law.

In the result, the Crl.R.P. is allowed and the impugned order is set aside and the matter is remanded to the Sub Divisional Magistrate Court for fresh consideration and for appropriate orders in accordance with law, in the light of what is stated above. Considering the entire fact, the SDM shall endeavour to pass appropriate orders within a period of three months from today. Both sides shall appear before the SDM on 7/12/2015 at 10 30 a. m.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

