

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.1368 of 2014
M.P.Nos.1 of 2014 and 1 of 2015

1. Kuppusamy
2. Saravanan
3. Seenivasan

... Petitioner/A Party

Vs

1. The Tahsildar
Judicial cum Executive Magistrate,
Amaindakarai Taluk, Chennai - 107.
2. The State of Tamilnadu
Rep. by the Inspector of Police (Law & Order)
K10, Koyambedu Police Station,
Chennai - 107.
3. Muthuraj

... Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to call for records of the 1st respondent dated 09.12.2014 made in Na.Ka.No.A3/11162/2014 on the file of Tahsildar cum Judicial Executive Magistrate, Aminthakarai Taluk, Chennai - 107 and set aside the same.

For Petitioners : Mr.M.Devaraj

For Respondents : Mr.P.Govindarajan, (for R1 and R2)
Additional Public Prosecutor
Mrs.S.Thankira (for R3)

O R D E R

Being aggrieved by the order made under Section 145 of the Cr.P.C., in R.C.No.A3/11162/2014 dated 09.12.2014, by the Tahsildar cum Executive Judicial Magistrate, Chennai, the 1st respondent, directing both the petitioners and the 3rd respondent, not to enter or encroach the disputed property viz., shop No.FA/79, Kamaraj Flower

Shop, Koyambedu Commercial Complex, the petitioners have filed the present revision petition.

2. This Court, while admitting the criminal revision case, has granted interim order. For vacating the same, the 3rd respondent has filed a vacate stay petition.

3. Material on record discloses that a complaint has been lodged to Sub-Inspector of Police, K10-Koyambedu Police Station, Chennai on 15.09.2014 by one Saravanan/Petitioner No.2, alleging that four persons known to Muthuraj /Respondent No.3, have threatened him. On receipt of the same, the police has assigned Community Service Register No.407 of 2014 dated 15.09.2014. Complaint reads that some unknown persons have threatened the petitioner to hand over the shop No.FA/79, Kamaraj Flower Shop, Koyambedu Commercial Complex, to Muthuraj/Respondent No.3.

4. Material on record further discloses that Muthuraj/Respondent No.3, has also given a complaint on 20.09.2014 to Inspector of Police, K10-Koyambedu Police Station, Chennai, alleging that he was a tenant under one Mr.Kuppusamy for 15 years and running a flower shop in the name of "Abinayasree KSK Flower Shop". In the complaint, he has further stated that on 20.09.2014, about 11.50 am, he found that the lock for the shop was broken and when he enquired with his neighbours, he was informed that Saravanan and Srinivasan, Petitioner Nos. 2 and 3, have broke open the lock. Muthuraj has alleged that a sum of Rs.25,000/- has been stolen, from the cash box. Muthuraj, Respondent No.3, in his complaint dated 20.09.2014 has further stated that when he enquired Saravanan and others, he was abused with filthy language and they also threatened him with weapons. According to him, Petitioner Nos.2 and 3 have encroached the shop, in which he was a tenant. He has requested the Inspector of Police, K10-Koyambedu Police Station, Chennai to take proper action against Saravanan and Srinivasan, Petitioner Nos.2 and 3, respectively. Complaint dated 20.09.2014 has been assigned CSR No.416 of 2014.

5. Material on record further discloses that the 2nd petitioner has lodged another complaint on 20.09.2014 to K10-Koyambedu Police Station, Chennai alleging that Muthuraj/3rd respondent along with 10 other persons, demanded that the shop should be given to him. When the petitioner refused, Muthuraj, threatened the 2nd petitioner, with dire consequences. Muthuraj, also told the 2nd petitioner that he knew many rowdies. Seeking action against the 3rd respondent and others, a complaint has been given. Protection has also been sought for. On the complaint, the police has assigned CSR No.418 of 2013 dated 20.09.2014.

6. Material on record further discloses that T.Muthuraj has filed a suit in O.S.No.5493 of 2014 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, against the petitioners, Kuppusamy, Saravanan and Srinivasan, arraying them as defendants therein. In I.A.No.14797 of 2014, T.Muthuraj/3rd respondent, has sought for an interim injunction restraining the respondents therein, their men, servants, etc., from interfering with T.Muthuraj's peaceful possession and enjoyment of the suit property and from evicting of T.Muthuraj from the suit premises, without due process of law, till the disposal of the suit. Schedule of the suit is a flower shop No.FA/79 stated to be in the name and style of KSK Abinayasree, Kamarajar Malar Angadi, Koyambedu, Chennai - 107, measuring an extent of 100 sq.ft.

7. Observing that the defendants/ respondents 1 and 2 in I.A., have been served, for which, an affidavit of service was also filed and despite the same, there was no representation from them, the learned XIV Assistant Judge, City Civil Court, Chennai, vide order dated 07.10.2014 has set them exparte and consequently, allowed the petition. Thus, on 07.10.2014, the Civil Court has granted injunction in favour of T.Muthuraj/3rd respondent, in I.A.No.14797 of 2014 in O.S.No.5493 of 2014 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

8. Material on record further discloses that subsequent to the order of the Civil Court stated supra, another complaint dated 10.10.2014, has been made by Mr.Saravanan/ Petitioner No.2, to Inspector of Police, K10-Koyambedu Police Station, Chennai, stating that hitherto, the key for the shop was with the respondent police and when he, went to the shop for carrying on the business, T.Muthuraj/3rd respondent and his brothers, have broke open the key and were white washing the shop. On the above incident, Saravanan/2nd petitioner has sought for protection and to deliver possession of the shop to him. On the above complaint, police has assigned CSR No.443 of 2014 dated 10.10.2014.

9. Material on record further discloses that as the dispute between the petitioners and the 3rd respondent over the shop No.FA/79, it has also caused apprehension in the minds of other business people and customers, a representation, dated 28.10.2014, has been given by Chennai Koyambedu Malar Motha Viyabarigal Sangam to the Inspector of Police, (L&O), K10-Koyambedu Police Station, Chennai to ensure that there should not be any disturbance to the other shop owners.

10. While the matter stood thus, K.S.Kuppusamy and two others/Petitioners 1 to 3, have filed another suit in O.S.No.5756 of 2014 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai, against Mr.T.Muthuraj/respondent No.3.

11. Petitioners 1 to 3, plaintiffs in O.S.No.5756 of 2014 have filed I.A.No.15500 of 2014 for an injunction against T.Muthuraj, his men servants, agents, etc, in any manner encroaching upon or interfering with the petitioners 1 to 3 / plaintiffs' peaceful possession and enjoyment of the suit property. Schedule to the suit in O.S.No.5756 of 2014, is Shop No.F/A-79, Vegetable/Fruit/Flower in Koyambedu Wholesale Market Complex - Perishable market, known as Kamarajar vegetable / Fruit / Flower Market comprised in T.S.No.2, PT Block No.65, of Koyambedu Village, within the limits of Egmore-Nungambakkam Taluk sub Registration District of Anna Nagar and Registration District of Central Chennai measuring about 71.5 sq.ft., bounded on the

North by : Shopping Street
South by : Ramp
East by : Shop No.F/A 77
West by : Passage

12. In the said civil suit, an exparte order dated 11.10.2014, has been ordered. Subsequently T.Muthuraj has entered appearance. From the petition and orders in I.A.No.15500 of 2014 in O.S.No.5756 of 2014 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai, enclosed in the typed set of papers filed by the petitioners in the present Criminal Revision Case, (filed on 22.12.2014), it could be deduced that the petitioners have contended that the interim order granted on 11.10.2014, has been extended up to 28.10.2014. Though, the petitioners are aware of the further orders passed in I.A.No.15500 of 2014 in O.S.No.5756 of 2014 on the file of XIII Assistant Judge, City Civil Court, Chennai, orders upto 28.10.2014, alone have been enclosed in the typed set of papers filed by the petitioners. Material on record further discloses that Saravanan/Petitioner No.2 has given a complaint on 13.11.2014 and it has been registered as CSR No.494 of 2014.

13. In this complaint, he has stated that when he was carrying on flower business at Shop No.FA/79, he was beaten up by T.Muthuraj and 10 others and articles in the shop were thrown out. After investigating the complaints made against each other, and taking note of the frequent occurrences in the market, where customers, persons from other States, visit and the business involved, the Inspector of Police (Law and Order), K-10 Koyambedu Police Station,

Chennai, has registered a case in Cr.No.2073 of 2014, dated 28.11.2013 and sent the same to the Tahsildar and Executive Magistrate, Amaidakarai, Chennai, 1st respondent herein, for suitable orders. Upon considering the FIR, the 1st respondent has passed the following orders,

“வட்டாட்சியர் மற்றும் குற்றவியல் செயல் நடுவர் அமைந்தகரை வட்டம், சென்னை - 107, அவர்களின் செயல்முறை ஆணைகள்

முன்னிலை திரு.S.சேகர்

ந.க.எண்.அ3/11162/2014

நாள் 09.12.2014

பொருள் ° வழக்கு - Cr.P.C பிரிவு 145 - சென்னை
மாவட்டம் - அமைந்தகரை வட்டம் -
கோயம்பேடு வணிக வளாகம் கடை எண்.
FA.79 கடையில் இருதரப்பினருக்கும்
இடையில் பிரச்சனை ஏற்பட்டுள்ளது -
பொது அமைதிக்கு குந்தகம் ஏற்படுவதால் -
குடையை முடி சீல் வைத்து ஆணையிடுதல்
- தொடர்பாக.
பார்வை ° கே-10, காவல் நிலைய முதல் தகவல்
அறிக்கை எண்.2073/2014 நாள் 28.11.2014
'A' party ° திரு.சரவணன், சினிவாசன், குப்புசாமி
மற்றும் பலர்
'B' party ° திரு.முத்துராஜ் மற்றும் பலர்

ஆணை

சென்னை - 107, கோயம்பேடு வணிக வளாகம், காமராஜ் மலர் அங்காடி, எண். FA.79 கடை தொடர்பாக 'A' party திரு.சரவணன், சினிவாசன், குப்புசாமி மற்றும் பலர் 'B' party திரு.முத்துராஜ் மற்றும் பலர் என்ற இரு தரப்பினரும் சட்டம் ஒழுங்கு பாதிக்கும் வகையில் சண்டையில் ஈடுபட்டு ஒருவருக்கொருவர் தாக்கிக் கொண்டு பொது அமைதிக்கு குந்தகம் விளைவிக்கக் கூடிய சூழ்நிலை ஏற்பட வாய்ப்புள்ளதாக பார்வையில் காணும் முதல் தகவல் அறிக்கையில் தெரிவிக்கப்பட்டுள்ளது. மேற்படி கடை குறித்து இரு தரப்பினரும் உரிமம் கோருவதால் அசாதாரண சூழ்நிலை நிலவுகிறது. மேற்காணும் காமராஜ் மலர் அங்காடி கடை எண். FA.79 இந்த இடத்தின் உரிய உரிமைதாரர் யார் என முடிவு செய்யப்படும் வரை சட்டம் ஒழுங்கு பாதுகாக்கவும், பொது அமைதிக்கு குந்தகம் விளைவிக்காமல் இருக்கவும் மேற்படி இரண்டு பிரிவினர் அல்லது அவர்களால்

நியமிக்கப்படும் நபர்கள் அல்லது அவர்கள் சார்பாக வேறு எவரும் மேற்படி இடத்தில் அத்து மீறி நுழையவோ ஆக்கிரமிப்பு செய்யவோ கூடாது என்பதற்காக குற்றவியல் நடைமுறை சட்ட பிரிவு 145ன் கீழ் தடை விதிக்கப்படுகிறது.

வட்டாட்சியர்

செயல் மற்றும் குற்றவியல் நடுவர்

அமைந்தகரை வட்டம், சென்னை - 10”

The abovesaid order is impugned in this revision case.

14. Referring to Section 145 of the Code of Criminal Procedure, Mr.M.Devaraj, learned counsel for the petitioners submitted that the impugned order of the 1st respondent, is liable to be set aside, on the sole ground that the Executive Magistrate, Amaindakarai, Chennai, has failed to arrive at a subjective satisfaction, that there is a likelihood of breach of peace. He further submitted that the impugned order does not reflect any grounds of subjective satisfaction.

15. According to the learned counsel for the petitioners, when the 1st respondent, by its order, dated 09.12.2014, has directed both the parties or any men, claiming through them, from forcibly entering into the property or encroach upon the same and also referred to Section 145 of the Code of Criminal Procedure, the impugned order, dated 09.12.2014, has to be treated as a final order, passed under the said Section and in such circumstances, the Executive Magistrate, ought to have provided the petitioners, an opportunity, by issuance of notice to both the parties, and only after considering the written statements of both the parties, he should have passed orders, on the aspect of possession, under Section 145 of the Code of Criminal Procedure.

16. Learned counsel for the petitioners submitted that when the scope of Section 145 of the Code of Criminal Procedure, is to deal only with reference to the actual possession of the parties, on the date of passing the order, the 1st respondent has exceeded in his jurisdiction, by observing that when both the parties have claimed ownership of the disputed shop, order under Section 145 of the Code was necessitated. According to him, the Executive Magistrate has erred in referring to ownership of the parties, which is beyond his jurisdiction.

17. Learned counsel for the petitioners further submitted that as per Sub-Section (4) of Section 145 of the Code of Criminal Procedure, proceedings ought to have been completed, within two

months, from the date of wrongful dispossession and in the case on hand, even before initiating the proceedings, in the manner, as contemplated, under Section 145(1) of the Code, ie., by passing a preliminary order and thereafter, informing the parties on notice, for submission of written statements, in respect of their respective claim for possession of the subject property, the 1st respondent has sealed the shop endlessly and thus, preventing the parties, from entering or encroaching upon the same.

18. Learned counsel for the petitioners further submitted that under Section 145 of the Code of Criminal Procedure, what has to be considered by the Executive Magistrate, is that, who was in actual possession of the property, on the date of passing the order, under Section 145 of the Code and the claim of the property, on the basis of ownership, is not to be adjudged. According to him, the 1st respondent is not empowered to prevent a lawful owner, from entering into the property. He claimed that the petitioners are the persons, lawfully entitled to possession.

19. On the interim order, granted by the learned XIV Assistant Judge, City Civil Court, Chennai, in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, to and in favour of the 3rd respondent, learned counsel for the petitioners submitted that it was only an ex parte order and necessary steps have been taken by the petitioners on 30.10.2014, by filing an application, to set aside the ex parte order. He therefore prayed that the ex parte order granted in the abovesaid suit, need not be given weightage, for the purpose of adjudicating the correctness of the impugned order, passed under Section 145 of the Code of Criminal Procedure.

20. Opposing the relief sought for, in the Criminal Revision Case and inviting the attention of this Court to the interim order, dated 07.10.2014, Mrs.S.Thankira, learned counsel for the 3rd respondent submitted that Muthuraj, was a tenant, under Kuppusamy, the 1st petitioner in this revision case, in respect of Shop No.FA/79, Kamaraj Flower Shop, Koyambedu Commercial Complex, Chennai-100. She further submitted that in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, filed by the 3rd respondent against the petitioners herein, after service of notice, vide order, dated 07.10.2014, the learned XIV Assistant Judge, City Civil Court, Chennai, has allowed the petition for injunction. Subsequently, when the 3rd respondent came to know that the revision petitioners have obtained an ex parte order in I.A.No.15500 of 2014 in O.S.No.5756 of 2014, on the file of the learned 13th Assistant Judge, a counter affidavit was filed to the said injunction petition.

21. She also submitted that though the 3rd respondent was a tenant under the 1st revision petition, in respect of Shop No.FA/79, Kamaraj Flower Shop, Koyambedu Commercial Complex, Chennai-100, measuring 100 Sq.Ft., on a monthly rent of Rs.5,000/-, the revision petitions have erroneously described the 3rd respondent as a daily rated employee, and obtained an ex parte interim order.

22. Material on record discloses that about 35 documents have marked on the side of the petitioners and 13 documents have been marked on the side of the respondents, in the injunction petition in I.A.No.15570 of 2014 in O.S.No.5756 of 2014. After considering the documentary evidence, the learned 13th Assistant Judge, City Civil Court, Chennai, vide order, dated 11.11.2014, in I.A.No.15500 of 2014 in O.S.No.5756 of 2014, has vacated the injunction granted in favour of the petitioners.

23. Thus, it is evident from the above that after the order in I.A.No.15500 of 2014 in O.S.No.5756 of 2014, granted in favour of the petitioners has been vacated and consequently, the legal position is that the earlier order in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, granted in favour of the 3rd respondent would continue to have its force, from 07.10.2014 onwards. At this juncture, the submission of the learned counsel for the 3rd respondent/Mr.Muthuraj, is that by suppressing the abovesaid fact of vacating the interim order, in favour of the petitioners, the present criminal revision case has been filed on 22.12.2014 and that an order of interim stay of the impugned order, has been obtained in the revision case, deserves to be considered.

24. In the memorandum of grounds of revision, dated 22.12.2014, the petitioner has only submitted that he has filed a suit in O.S.No.5756 of 2014 and obtained an order of injunction in I.A.No.15500 of 2014, against the 3rd respondent, which has been extended after notice. With the abovesaid averments, naturally, this Court, at the time of admission of the revision case, could have only formed an opinion that the interim order by Civil Court, in favour of the petitioners in I.A.No.15570 of 2014 in O.S.No.5756 of 2014, on the file of the learned XIII Assistant Judge, City Civil Court, Chennai, was in force. But the fact remains that as early as on 11.11.2014 itself, the interim order granted in favour of the revision petitioners has been vacated. As rightly pointed out, the petitioners have not disclosed the abovesaid fact that the interim order has been vacated and thus, there is a suppression of fact, to that extent.

25. On the facts projected by the petitioners on the revision case, at the time of admission, operation of an interim order granted in a civil suit would have certainly weighed the mind of any Court, in granting a protective order in the matter of possession and more particularly, in a case, arising under Section 145 of the Code of Criminal Procedure, which deals only with possession. On the date of considering Crl.M.P.No.1 of 2015 in Crl.R.C.No.1368 of 2014, for staying the impugned order, one of the material facts, taken into consideration by this Court, is the interim order stated to have been in force, in favour of the petitioners, but the position is otherwise. In the light of the above, this Court is of the view that the petitioners have not approached this Court with correct facts and with clean hands. Suppression of material facts is per se apparent. On the above facts, this Court deems it fit to consider certain cases, relating to suppression of material facts and clean hands.

(i) The Supreme Court in *Arunima Baruah v. Union of India* reported in 2007 (6) SCC 120, at Paragraphs 11 to 14, it held as follows:

"11. The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D)

It is contended that the fact that Moody has given those bribes prevents him from getting any relief in a court of equity. The first consequence of his having offered the bribes is that the vendors could have rescinded the contract. But they were not bound to do so. They had the right to say "no, we are well satisfied with the contract; it is a very good one for us; we affirm it". The proposition put forward by counsel for the defendants is: "It does not matter that the contract has been affirmed; you still can claim no relief of any equitable character in regard to that contract because you gave a bribe in respect of it. If there is a mistake in the contract, you cannot rectify it, if you desire to rescind the contract, you cannot rescind it, for that is equitable relief." With some doubt they said: "We do not think you can get an injunction to have the contract performed, though the other side have affirmed it, because an injunction may be an equitable remedy." When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for. In this case the bribe has no immediate relation to rectification, if rectification were asked, or to rescission in connection with a matter not in any way connected with the bribe. Therefore that point, which was argued with great

strenuousness by counsel for the defendant, Hatt, appears to me to fail, and we have to consider the merits of the case.

14. In Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. He who seeks equity must do equity.—In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

* * *

1305. He who comes into equity must come with clean hands.—A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the

equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(See also Snell's Equity, 13th Edn., pp. 30-32 and Jai Narain Parasrampur v. Pushpa Devi Saraf [2006 (7) SCC 756]"

(ii) In Prestige Lights Ltd., v. State Bank of India reported in 2007 (8) SCC 449, at Paragraphs 27, 33, 34 and 35, held as follows:

"26. In Gorden v. Gorden, (1904) 73 LJ 41 : 90 LT 597 : 16 Dig 90, 1128, Cozens Hardy, L.J. put the principle succinctly in the following words; "I desire expressly to limit my judgment to a case in which the [party in contempt] is saying that the order complained of is outside the jurisdiction of the court, as distinguished from the case of an order which, although it is within the jurisdiction of the court, ought not, it is said, to have been made.

.....

33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

"(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

26. Inspector of Police, K-10, Koyambedu Police Station, Chennai, in his status report filed before this Court, has explained the sequence of events, which has given rise to registration of Cr.No.2078 of 2014, dated 28.11.2014 and consequently, the request made by him, to the 1st respondent, to pass appropriate orders, under Section 145 of the Criminal Procedure Code. In his status report, he has stated that on 15-09-2014, Tr.K.S.Kuppusamy, has lodged a complaint that he warned the 3rd respondent, Muthuraj, who worked as an Assistant in his shop, for his acts in indulging in anti-social activities and on 11-09-2014, he came to know that Muthuraj, was arrested in a kidnapping case in K-11 C.M.B.T Police Station, Cr.No.1813/2014 u/s 365 IPC and lodged in prison, which was also published in Daily Thanthi Newspaper. On 14-09-2014 about 19.00 hrs, four unknown persons came to the shop, questioned and threatened, his

son Saravanan to hand over the shop to Muthuraj and they also told him that when Muthuraj comes out from the prison, they would murder him and his sons. Subsequently, the said Kuppusamy lodged a complaint and that the same was registered in K-10 PS CSR No.407/2014. It is the further case of the Inspector of Police, K-10 Koyembedu Police Station, that during the course of his enquiry, it revealed that Muthuraj is running the shop for the past 10 years, on rental basis from kuppusamy, and during his absence, Kuppusamy and his men, broke open the shop and took the possession of the shop.

27. In the report filed before this Court, Inspector of Police, K-10, Koyambedu Police Station, Chennai, has further stated as follows:

"(i) On 20-09-2014 @ 18.30hrs, Tr.Muthuraj, 3rd respondent herein, lodged a complaint that when he went to open the shop, he noticed that his shop was open and that he came to know that Saravanan and Seenivasan, who are the sons of Kuppusamy, have broke open the shop and removed his properties. When he questioned them, they threatened him with dire consequences. Muthuraj gave a complaint and the same was registered in K10 PS CSR No. 416/2014.

(ii) On 20-09-2014 @ 19.20 hrs, Tr.Saravanan, S/o Kuppusamy Respondent.2 herein, lodged a complaint that Muthuraj and 10 others came to his shop and threatened him to hand over the shop to him, and also told him that he is a Politically influential person and he knows so many rowdy elements, and that he would see as to how, Kuppusamy, could run the shop. He also threatened him.

(iii) On 10-10-2014 @ 16.00 hrs Tr. Saravanan lodged a complaint that when he was attending his business, Muthuraj came and abused him, picked up quarrel, caught hold his shirt, threatened him and took away Rs. 300/- from his pocket. Based on the complaint, a case in K10 PS Cr.No.1657/2014 u/s 294 (b), 392, 506 (i) IPC was registered against Muthuraj. Accused Muthuraj obtained Anticipatory Bail. सत्यमेव जयते

(iv) On 13-10-2014 @ 17.45 hrs, an Advocate Tr.Ranjith, S/o Devan, lodged a complaint that when he was waiting to collect some documents near Koyambedu Market, Saravanan and 2 others scolded him in filthy language and assaulted him, with stones and pen knife. Based on the complaint a case in K10 PS Cr.No.1683/2014 u/s 294(b), 506(ii) IPC was registered and it is under Investigation.

(v) On 13-11-2014 both Saravanan and Muthuraj along

with their supporters, picked up quarrel and assaulted each other. In this connection both the parties have lodged complaints and that the same was registered in K10 PS CSR No.493/2014 and 494/2014 respectively, and an enquiry was conducted.

(vi) On 15-11-2014 at 18.45 hrs., Tmt.Rajamani, W/o Saravanan lodged a complaint that Muthuraj along with 20 Transgenders came to the shop and threatened her to vacate the shop and torned her blouse. The same was registered in K10 PS CSR No. 4 96/2014 and enquiry is pending.

(vii) On 15-11-2014 at 10.00 hrs., Tr.Muthuraj lodged a complaint that on 13-11-2014 at about 12.25 hrs. when he was attending his business in the shop, Saravanan along with 3 others, waylaid, abused and assaulted him, with hands and threatened him. Based on the complaint a case in K10 Police Station, Cr. No.1917/2014 u/s 341, 323, 506(i) IPC was registered and it is under Investigation.

(viii) On 15-11-2014 at 19.00 hrs. Tr. Saravanan lodged a complaint that on 13-11-2014 at about 12.00 hrs., when he was attending his business in his shop, Muthuraj along with 10 others, waylaid and assaulted him, with hands and threw away his properties from the shop and also threatened him with dire consequences. Based on the complaint a case in K10 PS Cr.No.1918/2014 u/s 341, 323, 506(i) IPC was registered and it is Under Investigation."

28. The Inspector of Police, K-10, Koyambedu Police Station, Chennai, in his status report, has further stated that Tr.Muthuraj has approached the learned 14th Assistant Judge, City Civil Court, Chennai and filed a suit in O.S.No.5493/2014 in I.A. No.14797/2014 and obtained "interim injunction", restraining the respondents therein and their men, servants, agents etc., interfering with the peaceful possession and enjoyment of the suit property, by any act of eviction of the plaintiffs, from the suit premises, without due process of law, till the disposal of the suit. Tr.Kuppusamy and his sons, have subsequently filed a suit in O.S.No.5756/2014 before the XIII Assistant Judge, City Civil Court, Chennai also file I.A. No.15500/2014 and obtained an "exparte injunction" on 11-10-2014.

29. He has further submitted that after the receipt of the above exparte order passed by the learned XIII Assistant Judge, City Civil Court, Chennai, Mr.Muthuraj, has sought for vacation of the interim

injunction order passed in I.A.No.14797/2014 in O.S.No.5493/2014, and the learned XIII Assistant Judge, City Civil Court, Chennai, has vacated the exparte injunction granted on 11-10-2014 and therefore, the interim injunction order passed in I.A.No.14797/2014 in O.S.No.5493/2014, was in force and that no injunction was operating against Tr.Muthuraj. That on 28-11-2014, Tr.Muthuraj preferred a complaint that when he was attending his business, Saravanan and 40 others, came to his shop, violating the interim injunction order and driven away his workers. The same was registered in K10 PS CSR No. 525/2014 and during the course of enquiry, it revealed that more than 40 to 50 persons including politicians, transgenders and Advocates on either sides assembled in front of shop No.F/A.79 and picked up quarrel, causing disturbance to public tranquility.

30. The Inspector of Police, K-10, Koyambedu Police Station, Chennai, in his status report, has further stated that due to the prevailing situation and to maintain public tranquility, on the aspect of law and order, a case in K10 PS Cr.No.2073/2014 u/s 145 Cr.PC was registered on 28.11.2014, by arraying Saravanan and others, as 'A' Party and Muthuraj and others, as 'B' party and he submitted the same, to the Tahsildar, Aminjikarai, for an enquiry.

31. He further submitted that on 06-12-2014, Tr.Ilayaraja S/o.Meikandu lodged a complaint that when he was walking on the way to his home, Saravanan, Seenivasan, Rajamani and others, came in 2 auto rickshaws, waylaid, abused and assaulted him, with hands and threatened him, not to support Muthuraj, otherwise they would murder him. Based on the complaint a case in K10 PS Cr.No.2174/2014 u/s 341, 294(b), 323, 506(1) IPC was registered and it is under Investigation. The accused therein have approached the this Court and obtained anticipatory bail in CrI.O.P.No.32647/2014. He has further stated that very often, complaints from both sides, have been made, and that there is also a complaint received the flower market Sangam.

32. The Inspector of Police, K-10, Koyambedu Police Station, Chennai, has further stated that the Tahsildar, Judicial cum Executive Magistrate, Aminjikarai, has conducted an enquiry and sealed the shop No.F/A-79 vide his Proceedings C.No.A3/11162/2014 dated 09-12-2014, restraining both parties and their men, servants, agents etc., to enter or encroach upon the shop. He has also stated that Tr.Kuppusamy and his sons, have approached this Court, and filed Criminal Miscellaneous Petition No.1/2014 in CrI.Rc.No.1368/2014, challenging the orders issued by the Tahsildar, Judicial cum

Executive Magistrate, Aminjikarai, vide Proceedings in C.No.A3/11162/2014 dated 09-12-2014. This Court has passed an order that "there shall be an order of stay of the impugned order" in CMP No. 1/2014 in Crl.O.P.No.1368/2014 on 23-12-2014. Based on the orders of this Court in C.M.P.No.1/2014 in Crl.O.P.No.1368/2014, the Tahsildar, Judicial cum Executive Magistrate, Aminjikarai, has removed the seal of the shop No. F/A-79 vide his Proceedings C.No.A3/11162/2014, dated 09-01-2015 and handed over the keys to Kuppusamy and his sons.

33. He has also stated that due to continuous problems, the law and order in that area, was seriously affected and hence, the Secretary of Flower Merchants Association Sangam has given a representation. Sangam has represented that innocent merchants and public are also affected, due to the dispute, between the groups. There is also continuous fear in the mind of the people, who are coming to purchase flowers.

34. Sequence of events narrated in the status report of the Inspector of Police, K-10, Koyambedu Police Station, Chennai, makes it abundantly clear that both the parties are alleged to have committed offences and there are cases and counter cases. Suits have been filed, in respect of possession of a shop, located in Kamaraj Flower Shop, Koyambedu Commercial Complex, which is one of the crowded and busy wholesale market complex, in the City of Chennai. Visit of customers is a regular feature and certainly, Police has to maintain law and order, and peace, in the market area. Such being the case, the opinion of the Inspector of Police, K-10, Koyambedu Police Station, Chennai, in referring the matter to the Tahsildar, Executive Magistrate, Amaindakarai Taluk, Chennai, 1st respondent herein, to pass suitable orders, under Section 145 of the Code of Criminal Procedure, cannot be said to be manifestly illegal.

35. One of the contentions raised by the learned counsel for the petitioners is that the impugned order, has to be construed as a final order, for the reason that the rights of the parties, as regards possession, has been decided, without any notice. However, it is the contention of the learned Additional Public Prosecutor, it is only a preliminary order to maintain peace.

36. Section 145 empowers that if the 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 can pass appropriate orders.

37. In *Anandilal v. Sukhehand* reported in AIR 1930 Cal 715, a Hon'ble Division Bench of the Calcutta High Court has held that for making an order under Section 145, it is necessary that the Magistrate should be satisfied, at the time of drawing up the proceedings that there is, then existing a likelihood of breach of the peace arising from the disputes between the parties with regard to the land in question.

38. In *Saminatha Pillai v. Raghavachariar* reported in 1946 MWN (Cr.) 137, there were materials before the Magistrate, namely materials furnished in the petition itself to indicate that a breach of the peace was likely and in the circumstances, it was held that the preliminary order passed cannot be said to be invalid.

39. In *Khudiram Mandal v. Jitendranath* reported in AIR 1952 Cal. 713, a Hon'ble Division Bench of Calcutta High Court, held as follows:-

"Where the preliminary order under Section 145 (4) Criminal P. C. does not state the grounds of satisfaction as to the existence of a dispute likely to cause a breach of the peace the order is undoubtedly a defective order and if challenged in proper time, i.e., about the time when written statements are required to be filed or evidence led, it will be corrected or set aside."

40. In *China Kondappa v. Ram Row* reported in AIR 1964 AP 168, the question that arose for consideration was whether the Magistrate acted without jurisdiction in passing a final order under Section 145, Criminal P. C. even though there was no preliminary order passed under Section 145 (1) Criminal P. C. It was held that it was well settled that if there was no preliminary order made at all, the subsequent proceedings culminating in the final order are vitiated and that on the other hand, if there is a preliminary order, however defective it may be, the defect would not be fatal, unless it has resulted in prejudice.

41. In Nagammal v. Mani reported in 1966 Mad LW Cr1 101, this Court held that where the preliminary order was drawn by the Magistrate merely on the information laid by the Inspector of Police about the dispute, he must be satisfied that a dispute likely to cause breach of peace exists; and it is mandatory that he should state the grounds of his being so satisfied or language to similar effect must be employed to indicate that the Magistrate had applied his judicial mind to the Information In coming to the conclusion that he should take action under Section 145 (1) Criminal P. C. The learned Judge further observed that Magistrate should not take action merely on a police report.

42. In Peria Mannadha Goundar v. Marappa Goundar reported in AIR 1969 MAD. 411 = 1969 Cr1.L.J. 1410 = 1969 (1) MLJ 37, this Court quashed a preliminary order, on the grounds that the Executive Magistrate has not stated the grounds for his satisfaction, as required under Section 145 of the Code. At Paragraph 8, this Court, observed as follows:

"8. It is, therefore, necessary under Section 145 (1), Criminal Procedure Code, that the Magistrate having jurisdiction shall make an order in writing that he is satisfied either from a police report or other information that a dispute likely to cause a breach of the peace exists and state the grounds of his satisfaction before requiring the parties concerned in such dispute to attend his Court and put in written statements. This provision of making the order in writing and stating the grounds of his satisfaction appears to be mandatory. The words "shall make an order in writing stating the grounds of his being so satisfied" would clearly indicate that the order must be in writing and the grounds for satisfaction also must be stated. Unless the grounds are stated in the order itself, it will be difficult to test the correctness or otherwise of the order passed by the Magistrate. So, the preliminary order should state clearly the reasons and grounds on which the satisfaction is based and that the Magistrate had applied his mind in passing the preliminary order."

On the aspect of not mentioning the time, when the written statements are required to be filed or evidence adduced, after considering the decision in A.Khudiram Mandal's case, [AIR 1952 Cal. 713], this Court, at Paragraph 10, held that,

"This decision takes the view that the validity of the

final order under Section 145 Criminal P. C. could not be set aside because of omission to state the grounds in the preliminary order as such omission will be only an irregularity. But from this decision, it is clear that if an objection is taken as in the instant case, at the earliest point of time, the preliminary order can be quashed."

In the above reported case, the impugned order was passed one year, after the report and therefore, on the facts and circumstances of the case, this Court observed that,

"The preliminary order does not say that he had any further information subsequent to the report submitted by the police that the likelihood of a breach of peace continued and on the date of the preliminary order the dispute existed. A preliminary order passed long after the information the Magistrate had in respect of the breach of the peace cannot be sustained unless the Magistrate was satisfied from any further information or enquiry that a breach of the peace existed on the date of the preliminary order."

43. In *Bisse Gowda v. State of Mysore* reported in 1969 Cr1.L.J. 1170, it was held that,

"A mere statement in the preliminary order made under section 145 (1) by the Magistrate that he was satisfied from the police report that a dispute is likely to cause breach of peace, is not enough, but he must state the grounds of his being so satisfied which alone entitles him to make such an order. Noncompliance not only renders such preliminary order without jurisdiction but also vitiates the entire subsequent proceedings. Therefore, the mere fact that subsequent final order has been passed, will not have the effect of rendering the proceedings valid and the final order is liable to be quashed under section 439.

44. In *Sukumar v. State of Mysore* reported in 1972 Cr1.L.J. 319, the Executive Magistrate has expressed his satisfaction, on the basis of facts set out in the first information Report and the police report, before him and hence, it was observed that as stated in the Supreme Court in *R.H.Bhutani v. M.T.Desai* [AIR 1966 SC 144], those facts were prima fade sufficient and were the reasons leading to his satisfaction and that since these were materials before him, there is

no justification to think that he passed the impugned orders lightly or mechanically without being satisfied as to the existence of the conditions required by that section.

45. In *Gabrial Thanakayyan v. Narayana Nadar* reported in 1977 Cr1.L.J. 1879, it has been held as follows:

"On a careful reading of section 145 as a whole, particularly sub-section (1) it can be seen that every foundation of an action under the sub-section is the satisfaction of the Magistrate that a dispute likely to cause a breach of the peace existed on the date of the preliminary order, concerning the possession of any land or water or boundaries thereof situated within his or her local jurisdiction. It is only on being satisfied that there is a real dispute existing concerning the possession of immovable property and that such dispute is likely to cause the breach of peace that the Executive Magistrate gets jurisdiction to initiate proceedings and pass a preliminary order under section 145 of the Code. This satisfaction he or she may get from a report of the police officer or upon other information. The Magistrate must be satisfied of the necessity to take action under section 145 of the Code, before a preliminary order is passed and it cannot be said that in every case such satisfaction would automatically follow from a report of the police officer or upon other information. The provision in the Sub-section that the Magistrate shall make an order in writing, slating the grounds of his satisfaction is mandatory. If the grounds are not stated in the order, it will be difficult to test the correctness and validity of the order."

46. In *Kulandaisami v. Sherfuddin* reported in 1977 LW 187, the Court held thus,

"It is not every dispute that will attract invocation of section 145, Cr. P. C. by the contesting parties. The dispute must be also attended with a threatened breach of peace. A heading of chapter 10 in which section 145, Cr. P. C. occurs is Maintenance of public order and tranquility. The Magistrate is not; therefore, concerned with disputes between two or more number of parties acrimonious, however, they may be, unless there is a likelihood of such a dispute resulting in disturbance of public tranquility and resultant breach of peace. It is no doubt true that if an order is passed by a Magistrate, in exercise of his powers in favour

of one of the contesting parties, the Magistrate should give reasons why he is passing that order."

47. In *Ashfafi Lal v. Lath Singh* reported in 1982 CrI.L.J. 1172, it has been held that,

"Section 145 (1), Cr. P. C. requires that the Magistrate should state the grounds of his satisfaction that a dispute exists concerning any land or water or boundaries thereof which is likely to cause a breach of the peace. Those grounds are (a) a report of a police officer, or (b) other information. He need not state any facts beyond those identifying the property and the parties. Ground means foundation or basis and the foundation or basis of satisfaction is either the police report or other information."

48. In *Naresh Tevar v. Executive Magistrate and Tehsildar* reported in 1987 (1) Crimes (HC) 886, relied on by the learned counsel for the petitioner, this Court held that the Magistrate is not empowered to permit both parties not to enter upon the land at any cost and also passed another order, appointing the Revenue Inspector as Receiver of the property, for cultivating the coconuts and to sell the same in public auction and another order of attaching the property, under Section 145(1) of the Code, without giving any opportunity to the petitioners therein to prove that they were in possession of the land in dispute, as rightful owner and that the attachment and appointment of receiver, were held to be unnecessary.

49. Reverting to the case on hand, as observed by the Supreme Court in *R.H.Bhutani v. M.T.Desai* [AIR 1966 SC 144], the Police Report, dated 28.11.2014, containing all the details, was very much available before the Executive Magistrate, to arrive at a prima facie conclusion that there is a dispute between the petitioners and the 3rd respondent. A bare reading of the report, dated 28.11.2014, itself, indicates that there were several criminal proceedings between the parties, claiming right over the shop and offences have been alleged, against each other. The status report filed by the Police also indicates that the his enquiry revealed that the 3rd respondent was a tenant under the 1st petitioner, Kuppusamy. But perusal of the impugned order does not indicate that the Executive Magistrate was ever influenced by the statement of the Police, regarding tenancy. The information, dated 28.11.2014, furnished by the police to the

Executive Magistrate, clearly indicates the rival claims of the parties and that there were frequent occurrences disturbing peace in the market.

50. Complaints and cases registered against the each other, as set out in the report, dated 28.11.2014, makes it clear that law and order and peace is affected in a busy market complex, where there are customers, local and other states business people, engaged in trade and business. While arriving at the subjective satisfaction and while passing a preliminary order, reasons recorded, need not elaborate, as in the form of a judgment, but it should reflect application of mind of the Executive Magistrate to the existence of a dispute to the subject property and whether there is any likelihood of breach of peace. To that extent, in the case on hand, the Executive Magistrate has clearly recorded that there is a dispute between two groups and that there was a law and order problem in that area.

51. No doubt, in the impugned order, the Executive Magistrate has not specified the date and time, for the parties to submit their written statements, but as observed in Khundram's case (cited supra), the said order could be corrected or set aside. In Peria Mannadha Goundar's case (cited supra), this Court has held that a final order under Section 145 Cr.P.C., need not be set aside, because of the omission to state the grounds in the preliminary order, as such, the omission will be only an irregularity.

52. On the facts and circumstances of this case, it could be deduced that the Police in report, dated 28.11.2014 has clearly mentioned that the 3rd respondent has obtained an interim order of injunction in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, restraining the petitioners, from possession and enjoyment of the disputed shop. Despite the civil Court's order, the petitioners have been alleged to have forcibly entered into the shop, by removing the lock.

53. When the civil Court order is in force, the police could have taken note of the same and directed the parties to maintain status-quo, as per the order of the Civil Court. But when both the parties have alleged to have committed offences, against each other, thereby, cases and counter cases have been registered, the Inspector

of Police, Koyambedu, Chennai, has thought it fit to approach the Executive Magistrate for appropriate orders, under Section 145 of the Code, setting out the events, in the report, dated 28.11.2014, submitted to the Executive Magistrate. When there is a civil Court order, which is alleged to have been flouted and when Police's intervention and protection is sought for, the same should have been provided.

54. It is well settled that when the Civil Court has granted an interim order, protecting possessory rights, the Tahsildar, Executive Magistrate, Amaindakarai Taluk, Chennai, 1st respondent, is bound to consider the said order. When the interim order passed in favour of the 3rd respondent has been brought to his notice, he should have collected all the details from the Inspector of Police, K-10 Koyambedu Police Station, Chennai, before passing any order, under Section 145 of the Criminal Procedure Code.

55. When the civil Court passed an interim injunction in favour of the 3rd respondent, in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, the Executive Magistrate, ought not to have passed an order, directing both parties, to enter upon the disputed property. He should have passed an order, only after considering the interim order of the Civil Court, as regards possession, as on the date of passing the impugned order.

56. To that extent, the judgment of this Court in Naresh Tevar's case (cited supra), can be made applicable to the facts of the case on hand. Considering the facts and circumstances of this case, this Court is not inclined to accept the contentions of the learned counsel for the petitioner that the impugned order can be termed as a final order, passed under Section 145 of the Code.

57. On the contra, the impugned order has to be read as a preliminary order passed under Section 145(1) of the Code. No doubt, Executive Magistrate has failed to mention the date and time, as to when the written statements of the parties have to file, for passing a final order under Section 145 of the Code, but as observed earlier, it is only defective and the same can be cured by issuing any subsequent proceeding. The impugned order has been passed on 09.12.2014.

58. During the course of hearing, attention of this Court was invited to the proceedings, dated 09.01.2015 of the Tahsildar, Executive Magistrate, Amindakarai Taluk, Chennai, 1st respondent herein, in restoring possession to the petitioners. It is not known, as to how, the 1st respondent can restore possession to the petitioners, contrary to the Civil Court's order in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, dated 07.10.2014, on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, which is still in force, in favour of the 3rd respondent. Action of the Tahsildar, Executive Magistrate, Amindakarai Taluk, Chennai, 1st respondent, in restoring possession to the petitioners, is contrary to the civil Court's order, stated supra, would tantamount to interference with administration of justice.

59. Interim stay of the impugned order can only with reference to the impugned order, directing both parties not to enter upon or encroach the disputed property and it does not mean that he can pass a subsequent order, permitting the petitioners to be in possession, dehors the civil Court's order, where there is an injunction, as regards possession, in favour of the 3rd respondent.

60. On the facts and circumstances of this case, it is not proper for the Executive Magistrate to pass a subsequent order on 09.01.2015, putting the petitioners in possession of the disputed shop, when the civil Court's order is in favour of the 3rd respondent.

61. When the Police has submitted a report, dated 28.11.2012, setting out the events, indicating breach of peace and law and order problem, as a preliminary measure, the Executive Magistrate has passed an order, preventing both the parties not to enter upon or encroach the disputed property. As observed earlier, even at this stage, he should have taken note of the Civil Court's order. But he has not chosen to do so. Having regard to the urgency and expediency, the impugned order could be justified, that it has been passed to prevent the likelihood to breach of peace and thus, the Executive Magistrate has prevented any occurrence leading to a law and order problem, but the action of the Executive Magistrate, in permitting the petitioners to occupy the shop, contrary to the civil Court's order of injunction, cannot be countenanced.

62. Though the learned counsel for the petitioners submitted that the Tahsildar, Executive Magistrate, 1st respondent, has failed

to arrive at a subjective satisfaction, in respect of the dispute and also the likelihood of causing breach of peace, this Court is not inclined to accept the said contentions for the simple reason that sequence of events narrated in Cr.No.2073 of 2014, dated 28.11.2013, on the file of Koyambedu Police Station, would itself speak about the prevailing situation in the busy market area.

63. A bare reading of the report in the abovesaid Crime, on the file of Koyambedu Police Station, makes it clear that in the busy market place, where there are many customers, business people, within and outside the State, there were frequent incidents, affecting law and order and peace. From the report of the Inspector of Police, dated 28.11.2014, it could be deduced that the dispute regarding possession of a Flower Shop, has given rise to many criminal proceedings and civil suits, between the rival claimants. Therefore, it cannot be said that the Executive Magistrate has mechanically passed an order. In the impugned order, he has taken note of the report of the Inspector of Police, K-10, Koyambedu Police Station, Chennai, the then prevailing situation and that there were frequent incidents, affecting law and order and peace, in the market.

64. The reason assigned by the Tahsildar, Judicial-cum-Executive Magistrate, Amaidakarai Taluk, Chennai, 1st respondent herein, in respect of Shop No.FA/79, Kamaraj Flower Shop, Koyambedu Commercial Complex, reveals that both the parties have claimed rights and untill it is decided, there should be an order, under Section 145 of the Code of Criminal Procedure.

65. The words "உரிமம் கோருவதால்" ["rights claimed"] should not be construed to mean that the rival parties were claiming ownership over the shop. The word "உரிமம்" ["right"] used in the impugned order, should be given a literal meaning, to mean that it was only the right over the property, and not ownership. If the words used in the impugned order are read and understood in the manner, as indicated, then the impugned order of the 1st respondent, cannot be found fault with, when the Tahsildar-cum-Executive Magistrate, exercised his jurisdiction, while passing the order under Section 145 of the Code, pending further action on the issue.

66. The further contention of the petitioners that the impugned order does not satisfy the procedure contemplated under Section 145

of the Code of Criminal Procedure and that there is a violation of the Principles of Natural Justice, cannot be countenanced, for the reason that, at the time of passing a preliminary order, under Section 145(1) of the Code, no such procedure is contemplated.

67. In the light of the above discussion and the suppression on the part of the petitioners, interim order granted on 23.12.2014, is vacated. The present Criminal Revision Case is dismissed. Consequent to the dismissal of the criminal case, the Tahsildar, Executive Magistrate, Amindakarai Taluk, Chennai, 1st respondent, is directed to pass appropriate orders, restoring the status quo ante, respecting the order of the XIV Assistant Judge, City Civil Court, Chennai, in I.A.No.14797 of 2014 in O.S.No.5493 of 2014, dated 07.10.2014. The Inspector of Police, K-10 Koyambedu Police Station, Chennai, is directed to maintain peace in the market area. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1. The Tahsildar, Judicial cum Executive Magistrate, Aminthakarai, Taluk, Chennai - 107.
2. The Inspector of Police (Law & Order), K10-Koyambedu Police Station, Chennai - 107.
3. The Public Prosecutor, High Court, Madras.

+2cc's to M/s.S.Thankira, Advocate, S.R.No.12072,12018
+1cc to Mr.M.Devaraj, Advocate, S.R.No.11783

CrI.R.C.No.1368 of 2014
M.P.Nos.1 of 2014 and 1 of 2015

SV(CO)
CA(16/03/2015)

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