



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2015

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Crl.O.P.(MD)No.9450 of 2015

and

M.P.(MD)No.1 of 2015

C.Tamil Raj ... Petitioner

Vs.

1. The Sub Divisional Magistrate and  
Sub Collector,  
Cheranmahadevi,  
Ambasamudram Taluk,  
Tirunelveli District.

2. The Inspector of Police,  
Mukudal Police Station,  
Mukudal, Tirunelveli District.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the impugned proceedings in A4/6/2015 on 15.05.2015 passed by the Sub Divisional Magistrate and Sub Collector, Cheranmahadevi, Tirunelveli District and quash the same.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mrs.S.Prabha

Govt. Advocate (Crl.side)

#### O R D E R

This Criminal Original Petition is filed to call for the records relating to the impugned proceedings in A4/6/2015 on 15.05.2015 passed by the Sub Divisional Magistrate and Sub Collector, Cheranmahadevi, Tirunelveli District and quash the same.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondents.

<https://hcservices.courts.gov.in/hcservices/> The petitioner, who forms part of "B" party in a preliminary order passed under Section 145 of the Code of Criminal Procedure, has come forward challenging the same on the ground of

non application of mind, non-speaking order and the grounds are not stated. The learned Counsel appearing for the petitioner also made reliance upon the judgment rendered in *N.S.Nanjundasamy and another Vs. N.Venkatachalam and others* reported in 1994 MLJ(Cr1.) 155, apart from other judgments.

4. This Court perused the order of challenge and found that absolutely there is no reason has been assigned. The order passed is reproduced herein.

" WHEREAS, I am satisfied with the information furnished by the petitioner that a dispute likely to be cause a breach of the peace exist between the Counter Petitioners in 'A' and 'B' Party above the concerned property situated within my local jurisdiction.

Counter petitioners are directed to attend this Court in person or by a Pleader at 03.00 p.m. on 18.05.2015 at Sub Divisional Magistrate and Sub Collector of Cheranmahadevi and put in written statements of their respective claims as to the fact of actual possession of the said property."

5. Considering the very same issue dealt with in the judgment referred supra by the petitioner, this Court has observed as follows:

" It is seen from the wordings of the section itself that the Magistrate is required to state in writing the grounds of his satisfaction that a dispute exists concerning any land or water or the boundaries thereof, which is likely to cause a breach of peace. Ground means foundation or basis. The foundation or basis of satisfaction is either the police report or other information. A mere statement in the preliminary order made under Section 145(1), Criminal Procedure Code by the Magistrate that he was satisfied from the police report that a dispute likely to cause breach of peace exists is not enough, but he must state the grounds of his being so satisfied which alone entitles him to make such an order. Every foundation of an action under Sub-Sec.(1) of Sec.145, Criminal Procedure Code is the satisfaction of a Magistrate that a dispute likely to cause breach of peace existed on the date of the preliminary order concerning the possession of any land etc. It is only on being satisfied that there is a real dispute existed concerning the possession of some immovable property and that such dispute is likely to cause breach of peace, the Executive Magistrate gets jurisdiction to initiate proceedings and pass a preliminary order under Sec.145 of the Code. If the grounds are not stated in the order, it will be do. 6600048-1

to test the correctness and validity of the order. The relevant part of the impugned order extracted above discloses that in the present case, the Magistrate



has only stated that he is satisfied. Evidently, this is a non-speaking order made without application of mind and the express mandatory provisions of Sec.145(1) Criminal Procedure Code are not complied with. And the non-compliance, not only renders such preliminary order without jurisdiction, but also vitiates the entire subsequent proceedings."

6. In the light of the above, the order impugned is set aside and the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

ssl

To

1. The Sub Divisional Magistrate and  
Sub Collector,  
Cheranmahadevi,  
Ambasamudram Taluk,  
Tirunelveli District.
2. The Inspector of Police,  
Mukudal Police Station,  
Mukudal, Tirunelveli District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to MR. N.DILIPKUMAR, ADVOCATE IN SR NO. 26938

Cr1.O.P.(MD)No.9450 of 2015  
and

M.P.(MD)No.1 of 2015  
02.06.2015

rg.04.06.2015 3p.5c.