

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.R.C.No.1433 of 2016

and

CrI.M.P.No.12450 of 2016

K.Devamani

...Petitioner

vs.

1. A.Ganesan

2. State represented by

Station House Officer,
Thirunallar Police Station,
Karaikkal.

...Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of Sub Divisional Magistrate, Karaikkal, Puducherry dated 29.08.2016 in M.C.No.133 of 2016 and to set aside the same.

For Petitioner : Mr.K.Srinivasan

For Respondents: Mr.V.Balamurugan

Public Prosecutor, Puducherry - R2

O R D E R

Heard Mr.K.Srinivasan, learned counsel for the petitioner and Public Prosecutor, Pondicherry.

2. These revisions challenges the order of the Executive Magistrate passed in M.C.No.133 of 2016, dated 29.08.2016.

3. The order under challenge, on the very face of it, is unsustainable. This Court proceeds to set aside the same without causing notice to the first respondent. By the order under challenge, the Executive Magistrate has in ostensible exercise of power u/s.145 Cr.P.C. directed both parties to maintain status quo. It is not open to the Executive Magistrate to pass such an order.

4. A perusal of the order indicates that the petitioner has resorted to filing a suit after appearing before Executive Magistrate on 01.04.2016 and sought to avoid an order by the Executive Magistrate informing the pendency of such suit and of the same being in respect of the property covered by the order. Though generally an Executive Magistrate would hold his hand

when the matter in dispute is pending decision of a Civil Court, the same is not a rule of universal application and particularly when a suit is preferred as a ruse to avoid proceedings u/s.147 Cr.P.C. Even so, Sec.145(4) mandates thus :

"Sec.145 (4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under subsection (1), in possession of the subject of dispute:

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

Sec. 145(6) reads as follows :

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

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

5. In the instant case, no enquiry whatsoever has been held. The parties have not been required to let in evidence. Order has been passed on the strength of reports of three village administrative officers. A conjoint reading of Sec.145 (4) and (6) of Cr.P.C. make it clear that an Executive

Magistrate may :

(1) direct the retention of possession of property by a person in possession

(OR)

(2) may cause possession of property in the hands of one dispossessed.

6. The first he is required to do, if possible. The second, he is required to do when it appears to him that a party has been dispossessed within the period contemplated under Sub section (6). To repeat, it is not open to him to order status quo. As informed in Sec.145(1) Cr.P.C., the Executive Magistrate may proceed u/s.107 Cr.P.C. in an appropriate case.

7. The learned Public Prosecutor submits that Section 145 (4) does not stand in the way of the Magistrate passing an order without hearing the parties, if the urgency of the situation demands. We are unable to accept such submission. Learned Public Prosecutor also prays that this Court may direct both the parties to maintain peace pending decision of the civil suit. Such is a duty cast upon the petitioner as also upon every citizen and it is unnecessary to make such an observation in the order.

8. With the above observations, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

vrc
To

Sub Assistant Registrar

- सत्यमेव जयते
1. Station House Officer,
Thirunallar Police Station,
Karaikkal.
 2. The Public Prosecutor,
High court, Madras.

+lcc to Mr.Srinivasan Advocate, S.R.No.68612
+lcc to the Government Pleader, S.R.No.69212

NRI (CO)
RS(14/03/2017)

Cr1.R.C.No. 1433 of 2016