



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD) No.13897 of 2017

and

Crl.M.P.(MD)Nos.9337 and 9338 of 2017

G.Karuppiah,
2.K.Gurusamy
3.M.Muthiah
4.P.Natarajan
5.P.Muthia
6.G.Krishnan
7.Muthiah Thevar
8.C.Rajaram
9.Raja Guru
10.K.Sundaram

... Petitioners

-Vs-

1. The State represented by
The Inspector of Police,
Peraiyur Police Station,
Madurai District
(in crime No.193 of 2017)

2. The Revenue Divisional Officer,
Usilampatti,
Madurai District.

3.K.K.Muniyandi
4.K.K.Gurusamy
5.C.Sankarapandi
6.K.Gurusamy
7.Varathan
8.Muthuramalingam
9.M.Gurusamy
10.Muthuram
11.Kalieswaran
12.Ganesan

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in the proceedings in Criminal Original Petition No.13897 of 2017/AA-4 dated 28.07.2017 passed by the Revenue Divisional Officer, Usilampatti and quash the same.



For Petitioners : Mr.R.Govindaraj
For R-1 & R2 : Mr.K.S.Durai Pandian
Additional Public Prosecutor

ORDER

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This Criminal Original Petition has been filed to quash the records in the proceedings in Na.Ka.3261/2017/AA-4 dated 28.07.2017 passed by the Revenue Divisional Officer, Usilampatti.

2.Heard the learned Counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first and second respondents.

3.The case of the petitioner is that Maravar Pothu Uravin Murai was formed by the Marvar Community people to administer the properties belonging to the said community. The said Uravin Murai was administrated by 12 members and out of 12 members, three members died. It is stated that the said Uravin Murai, except the rival members, had convened a meeting and passed a resolution nominating the first petitioner, namely, G.Karuppiah to administer the affairs. It is further stated that the first petitioner took over the administration of the Marvar Pothu Uravin Murai and that at this juncture, the third respondent and his men are interfering with the day to day affairs of the said Uravin Murai.

4.It is the further case of the petitioner that once in four years, the said Uravin Murai used to celebrate Sri Manthai Amman festival. In this connection a representation was given to the first respondent seeking police protection on 02.05.2017. The third respondent and his men also made a representation to the third respondent seeking police protection to conduct the said festival on 26.05.2017. After receiving both the representations, the first respondent, appears to have registered a case under Section 145 of Cr.P.C. against both groups in Crime No.193 of 2017 and forwarded the First Information Report to the second respondent for initiating proceedings under Section 145 of Cr.P.C.

5.The second respondent issued summons to the petitioners as well as the private respondents, on 28.07.2017 under Section 145 of Cr.P.C., calling upon both the parties to appear on 11.08.2017, along with necessary documents, failing which, appropriate order will be passed on the basis of available documents. Aggrieved by the same, the petitioner has come forward with this petition for the above said relief.

6.The learned Counsel for the petitioners states that no provisional order as required under Section 145(1) of Cr.P.C and the order is without jurisdiction and illegal. The learned Counsel for the petitioners relied upon a judgment of this



Court in the case of **R.Thiagarajan vs K.Angamuthu** reported in **1996-2L.W.(Cr1.) 615**, wherein, the learned Single Judge of this Court has held as follows:

"To -day in Criminal Revision Case No. 5 of 1996, I have considered the validity and legality of the proceedings impugned in the case viz., M.C. No. 5 of 1995, dated 24.12.1995 and I have come to the conclusion that it is illegal, as the relevant mandatory against each other Both cases have been registered by the Police in Crime Nos. 1023 of 1995 and 82 of 1995. in the mean time, the Petitioner has received a summon purported to be issued under Section 145 of the Code of Criminal Procedure in M.C. No. 5 of 1995 -A3, dated 24 -12 -1995 from the Sub Divisional Magistrate and Revenue Divisional Officer, Erode. The said order directing the parties to attend to office for an enquiry under Section 145 of the Code of Criminal Procedure is sought to be challenged on the simple ground that the learned Sub Divisional Magistrate did not comply with the mandatory provisions as contemplated under Section 145(1) of the Code of Criminal Procedure and as per the dictum laid down by this Court. While invoking the provisions of Section 145 (1) of the Code of Criminal Procedure, the learned Sub Divisional Magistrate has to pass a preliminary order under the said section and then fix the enquiry. According to learned Counsel for the revision Petitioner, the impugned order dated 24 -12 -1995 purported to have been passed under Section 145(1) of the Criminal Procedure code does not fulfill the conditions as contemplated under the said section. According to Section 145(1) of the Code of Criminal Procedure there must be grounds of satisfaction expressed in clear and unequivocal terms in the order, intimating the rival parties that there is a dispute likely to cause a breach of the peace. A careful perusal of the impugned order does not show the grounds of satisfaction.

3. With regard to this particular aspect, I heard, Mr.R.Sivakumar learned counsel appearing for the respondent. I find much fore in the submission made by learned counsel for the petitioner Time and again courts have held that the enquiry under S.145 of the Code of Criminal Procedure should be initiated only when the mandatory Provisions of S.145(1) of the Code of Criminal Procedure has been complied with, by passing a preliminary order, giving out all the necessary details and reflecting the grounds of satisfaction arrived at by the Magistrate, otherwise, the entire proceedings would be illegal. On this sole ground, since I feel that the



impugned order has been passed by not complying with the relevant mandatory provisions of the Code of Criminal Procedure, the same is liable to be set aside as illegal. Accordingly, Criminal Revision Case No.5 of 1996 shall stand allowed."

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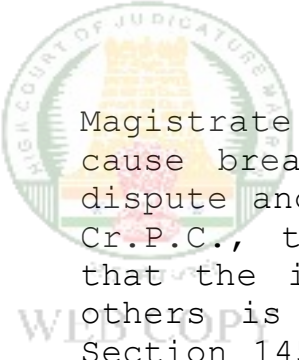
7.The learned Counsel for the petitioners relied upon another judgment of learned Single Judge of this Court in the case of **Anbayyan and 2 others vs Reginammal** reported in **1995-1-L.W. (Cr1.) 72**, wherein, it has been held as follows:

"I find only a notice issued by the Executive Magistrate dated 14.1.92 to the effect that with regard to the dispute over the possession in survey No.624/12, the enquiry would be conducted on 27.1.92 at 10.00 and both parties should appear with the records to prove their rights. Except this notice, there is nothing to show that any order was passed by the Executive Magistrate as required under Section 145(1) Code for the fact that he was satisfied from the information that a dispute likely to cause the breach of peace. Therefore, as rightly contended by the learned counsel, there is no order under Section 145(1) of the Code to proceed under Section 146 (1) of the Code to attach the property and for the appointment of a Receiver.

8.In the first judgment, which is reported in 1996-2-L.W. (Cr1.) 615, it has been stated that the Show Cause Notice can be issued after passing a preliminary order, under Section 145(1) of Cr.P.C., specifying the details and reflecting the grounds of satisfaction arrived at by the Magistrate. It is to be understood that an enquiry under Section 145 of Cr.P.C., can be conducted by the Executive Magistrate / The Revenue Divisional Officer only after making an order in writing, stating the grounds on which he is satisfied that there exist some dispute relating to land or water which is likely to cause a breach of peace. Section 145(1) of Cr.P.C. does not contemplate separate orders.

9.In the second judgement, the impugned notice, which is the subject matter of the proceedings, was without indicating the subjective satisfaction of the Executive Magistrate as to the information regarding the dispute, which is likely to cause breach of peace as contemplated under Section 145(1) of Cr.P.C. In the notice impugned in this petition, there is clear reference to the nature of dispute between two groups and the first information report in Crime No.193 of 2017 reflecting breach of peace. This notice is in compliance of Section 145(1) of Cr.P.C.

<https://hcservices.courts.gov.in/hcservices/> 10. Section 145(1) of Cr.P.C., requires that there should be subjective satisfaction of the authority, namely, the Executive



Magistrate about the existence of a dispute, which is likely to cause breach of peace. Since the impugned notice refers to the dispute and the registration of criminal case under Section 145 of Cr.P.C., to prevent breach of peace, this Court is of the view that the impugned notice / summons issued to the petitioner and others is perfectly in order, as the same is in compliance of Section 145(1). Hence this Criminal Original Petition is dismissed as devoid of any merits. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Peraiyur Police Station,
Madurai District
2. The Revenue Divisional Officer,
Usilampatti,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cmr
MK/KK/SAR-1/09.11.2017/5P/4C

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