

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.15625 of 2013

and

M.P.No.1 of 2013

1. R.R.Kumar
2. R.R.Sridhar Petitioners

Vs.

1. The Tahsildar Cum Executive Magistrate,
Madhavaram, Tiruvallur District.
2. The State Rep. by
Inspector of Police,
M-5, Ennore Police Station,
Chennai - 600 057.
3. Sankaralingam
4. Prabakaran
5. P.Arumugam Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in Na.Ka.No.6896/2013/A1 dated 07.06.2013 signed on the file of Tahsildar Cum Executive Magistrate, Madhavaram and quash the same.

For Petitioners : Mr.K.Balasubramaniam

For Respondents : Mr.B.Arul Mozhi Maran
Government Advocate (Crl. Side)
for R1 & R2
Mr.A.Kalaivanan for R3 to R5

O R D E R

This petition has been filed to quash the summons which was issued by the first respondent on 07.06.2013 to the petitioners herein.

2. The learned counsel for the petitioners relying upon the Division Bench order of this Court in M.Krishnamoorthy Vs. P.M.Neelamegham and others reported in 2004-1-L.W(Crl) 22 submitted that Sub-Section (1) of Section 145 of Cr.P.C

contemplates the passing of order by the Executive Magistrate and as per Sub-section (3), that order has to be served in the manner provided by Cr.P.C for the service of summons upon persons as directed, but in this case, the first respondent has not passed any preliminary order and hence, the summons issued by the first respondent dated 07.06.2013 has to be quashed.

3. The learned counsel for the respondents 3 to 5, on the contrary, has submitted that the aforesaid Division Bench decision has been over ruled by the Full Bench of this Court in Crl.R.C.(MD).No.863 of 2011 dated 13.04.2016 (A.Dhaveethu Vs. The District Collector, Sivagangai District, Sivagangai and others) and hence the failure of the Executive Magistrate to pass a preliminary order under Section 145 (1) Cr.P.C., is a mere irregularity and will not affect his jurisdiction and therefore he prayed to dismiss the petition and allow the first respondent to proceed further in accordance with law.

4. The learned counsel for the first respondent has also supported the arguments of the learned counsel for the respondents 3 to 5.

5. In A.Dhaveethu Vs. The District Collector, Sivagangai District, Sivagangai and others (Supra) the Full Bench of this Court in paragraph Nos 47 and 63 has observed as follows:

"47. We must observe that the two judgments i.e. that of Patna High Court and of the Calcutta High Court have correctly set out the law on the subject. We are in full agreement with the same. In view of the above discussion, we have no hesitation to hold that the decisions of the learned Single Benches of this Court as well as the Division Bench in Krishnamoorthy, are not binding precedents and they have not set out the correct position of law". सत्यमेव जयते

"63. In the light of the above discussion, we answer the questions posed by the learned Judge as follows:

"1. Though the Executive Magistrate is required to pass a preliminary order under Section 145 (1) of the code.

2. The failure of an Executive Magistrate to pass a preliminary order under Section 145 (1) of the code is a mere irregularity and will not affect his jurisdiction.

3. Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.

4. The aggrieved parties are empowered to move the very same Authority for reviewing his decision or in its absence, move the competent civil Court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases, they can move this Court for a judicial review either under Section 397 of the Code or under Article 226/227 of the Constitution"

6. From the above decision of the Full Bench it is clear that though the Executive Magistrate is required to pass a preliminary order under Section 145 (1) of Cr.P.C., the absence of the same will not vitiate his final order under Section 145 (4) of Cr.P.C., It is also clear that the failure of an Executive Magistrate to pass a preliminary order under Section 145 (1) of Cr.P.C is a mere irregularity and will not affect his jurisdiction. Therefore, the summons issued by the first respondent directing the petitioners to appear for enquiry without passing a preliminary order under Section 145 (1) Cr.P.C., is a mere irregularity and will not affect the jurisdiction of the first respondent. Therefore this petition is liable to be dismissed.

7. In the result, this petition is dismissed. The first respondent is directed to conduct an enquiry and dispose of the same in accordance with law. Consequently connected Miscellaneous Petition is closed.

dh

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TO

1. The Tahsildar cum Executive Magistrate, Madhavaram, Tiruvallur District.
2. The Inspector of Police, M-5, Ennore Police Station, Chennai - 600 057.

+1cc to Mr.K.Balasubramaniam, Advocate S.R.No.67361
+1cc to M/s.Prof.M.Udhaya Bhanu, Advocate, S.R.No.67775

KR/2/11/18

Cr1.O.P.No.15625 of 2013