

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.15104 of 2010
and
M.P.No.1 of 2010

Ramammal

... Petitioner

vs.

1. Sub-Divisional Magistrate (North),
Puducherry.

2. The Station House Officer,
D Nagar Police Station,
Puducherry.
(Cr.No.48/2010)

3.Suresh

4.Sangaralingam

5.Balamurugan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order in M.C.No.87 of 2010 dated 16.02.2010 on the file of the Sub-Division Magistrate (North), Pudhuchery.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.M.R.Thangavel (for R1 and R2)
Government Advocate (Pondicherry)

Mr.T.Arul Raj (for R3)

No Appearance (for R5)

JUDGMENT

Aggrieved against the impugned order passed by the Learned Sub-Division Magistrate (North), Pudhuchery on 16.02.2010, the present petition under Section 482 of Cr.P.C. has been preferred before this Court.

2. In the impugned order of the 1st respondent it is mentioned that the Learned Sub-Divisional Magistrate received information from the Station House Officer of 'D'-Nagar Police Station stating that there exist a dispute among the petitioner herein and the respondents 2-5 herein with respect of the possession and enjoyment of the property comprised in R.S.No.80/3 and 80/4, measuring an extent 600 sq. feet of house located at No.222, Poongulam, Kamaraj Salai, Pudhucheery. According to the petitioner she is the owner of a portion of a shop which was leased to her by "Sri Muthu Vinayagar and Sri Subrmaniyan Swami Kovil and Nagamuthumari Amman Temple Devasthanam. Whereas the petitioner's brother's son namely Suresh, the 2nd respondent herein claimed that he is the owner of one of the shop and the petitioner who is referred as 'A' party in the impugned order causing hindrance to the possession and enjoyment of his shop. Hence a case in counter was made by both parties and the same was referred by the 'D'-Nagar Police to the 1st respondent herein for passing order under Section 145 of Cr.P.C.

3. This Court cannot go into the disputed question of facts. The point for consideration arise before this Court is whether the impugned order passed by the Learned Sub-Division Magistrate, under Section 145(1) is sustainable under law and the same is liable to be quashed or not?

4. I have heard Mr.V.Raghavachari, learned counsel for the petitioner, Mr.M.R.Thangavel, learned Government Advocate (Pondicherry) for the respondents 1 and 2, Mr.T.Arul Raj, learned counsel for the 3rd respondent and there is no representation on behalf of the 5th respondent and perused the order impugned.

5. The first contention of Learned Counsel for the petitioner before me is that the Learned Sub-Division Magistrate had not expressed his subjective satisfaction and passed a preliminary order as contemplated under Section 145 (1) Cr.P.C. With regard to the above said argument of the Learned Counsel for the petitioner it is useful to extract Section 145(1) Cr.P.C. hereunder for better understanding:

"Section 145 (1)

Whenever an 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 shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by

pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute."

6.A bare reading of the above said provision would make it clear that on receipt of the information/report from a concerned police officer that a dispute likely to cause a breach of peace exists concerning any land or water or the boundaries there on, the respective Executive Magistrate shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned to attend the Court.

7.I have no quarrel with the proposition that whenever a Magistrate passes a preliminary order under Section 145(1) such an order should satisfy all the requirements of law namely (i) the arrival of a subjective satisfaction, (ii) recording of the grounds for arriving at such satisfaction and (iii) issuing the order in writing. In the present case on hand a reading of the impugned order shows that it has not satisfied the above requirements in the sense that the Learned Sub-Divisional Magistrate has not mentioned the grounds of his satisfaction to order notice as contemplated under Section 145(1) of Cr.P.C. Therefore, the order impugned is liable to be quashed on that ground itself.

8.The other submission of the Learned Counsel for the petitioner is that the petitioner herein has already filed a civil suit against the 2nd respondent herein in O.S.No.593 of 2010 on the file of the Principal District Munsif Court, Pudhucherry and therefore the continuation of Section 145 proceedings will seriously prejudice the right of the parties. When the petitioner herein has already approached the competent civil Court to get appropriate remedy, the impugned proceeding under section 145 Cr.P.C need not be preceded further and the continuation of the same would cause hardship to the petitioner.

9.As a matter of fact the provision of inherent power envisaged under Section 482 of Cr.P.C are unique and special provisions conferring power to a Court of record to administer justice strictly according to its judicial conscience based on law and fair play and in process of doing so to make such orders as may be necessary to give effect to any order under this code and to prevent the abuse of process of Court or otherwise to secure the ends of justice. It is to be noticed that under other enactments inherent powers are also conferred upon the Subordinate Courts under Section 151 of CPC. But under Criminal Procedure Code the legislature thought it proper to confer inherent power only upon the High Court which is a Court of

record within the meaning of Article 215 of the Constitution.

10. Consequently, the order passed by the Learned Sub-Divisional Magistrate (North), Pudhuchery on 16.02.2010 passing preliminary order under Section 145(1) of Cr.P.C is hereby quashed and the instant Criminal Original Petition is allowed to prevent abuse of the process of Court and to uphold the supremacy of rule of law in a democratic country like ours.

11. In the result, this criminal original petition is allowed and the proceeding in M.C.No.87 of 2010 dated 16.02.2010 on the file of the Sub-Division Magistrate (North), Pudhuchery is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Sub-Division Magistrate (North),
Pudhuchery.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.759
+1cc to the Public Prosecutor, Puducherry, S.R.No.1049

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CS/23/01/18

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