



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C (MD) No.531 of 2018

and

CrI.M.P (MD) No.7368 of 2018

S.P.Anthonisamy

: Petitioner/B-Party

Vs.

1.The Sub Divisional Magistrate &
Revenue Divisional Officer,
Thanjavur.

:1st Respondent/
Competent Authority

2.The Inspector of Police,
East Police Station,
Thanjavur.

:2nd Respondent/Respondent

3.S.P.S.Aruldoss

: 3rd Respondent/A-party

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records relating to the impugned order in Na.Ka.No.5176/2018/A3 dated 20.08.2018 passed by Sub Divisional Magistrate & Revenue Divisional Officer, Thanjavur, set aside the same and allow this criminal revision case.

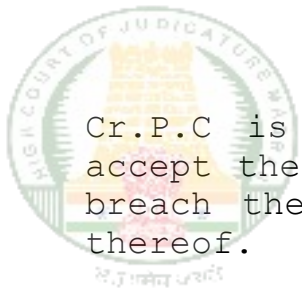
For Petitioner : Mr.P.Vadivel

For R-1 and R-2: Mr.A.Robinson,
Government Advocate (CrI.Side)

ORDER

This Criminal Revision case is directed against the summon issued by the Sub Divisional Magistrate and Revenue Divisional Officer, Thanjavur to the petitioner herein and his rival party to appear before him and show cause why order should not be passed under Section 145(3) Cr.P.C.

2.The contention of the revision petitioner is that when the dispute is regarding the pathway, the Executive Magistrate cannot invoke power under Section 145(3) Cr.P.C., but only 133



Cr.P.C is the appropriate provision. This Court is unable to accept the plea. Section 145 Cr.P.C is regarding any attempt to breach the peace concerning any land or water or the boundaries thereof.

3. Admittedly, in this case there is a dispute between the rival parties and the writ petition is filed and the matter is pending. While the revision petitioner claims that the disputed land is a public road and pathway, the rival party claims it as it is a patta land. Pursuant to this, the police has informed the revenue official that there is a likelihood of breach of peace due to the fight between the two groups. In order to avoid any breach of peace, the Executive Magistrate has invoked his power under Section 145 Cr.P.C.

4. The learned counsel for the revision petitioner would submit that while passing an order under Section 145 Cr.P.C., the Executive Magistrate should record the reason for passing such an order. In support of the above said submission, the learned counsel would rely upon the judgment reported in **1990 MLJ (Cr1) 149** in the matter of **Karthikeyan and others Vs. State by Inspector of Police (I&O) and others** and in the matter of **Muthukrishnan and another Vs. Station House Officer, Town Police Station, Karaikal** reported in **1995 CRI.L.J.2997**.

5. This Court has no quarrel or difference of opinion insofar as these two judgments cited. From a perusal of the impugned order, it is clear that the first respondent herein vide his order dated 20.08.2018 had extracted the facts of the case and act of S.P.Anthonisamy, who has blocked the pathway leading to the house of S.P.Selvaraj and therefore, there is a possibility of breach of peace due to the rival between the two parties. Based on the report given by the Police, the RDO has summoned both the parties to appear before him and participate in the enquiry initiated under Section 145(1) of Cr.P.C., which was scheduled to be held on 27.08.2018. The petitioner herein has appeared in the enquiry and the enquiry is adjourned to 10.09.2018. Instead of participating in the enquiry, he has preferred this Criminal Revision Case alleging that the reason for summoning him is not stated in the impugned notice dated 20.08.2018. The said allegation itself is per se wrong, since the substratum of the police report and the apprehension of the Executive Magistrate regarding the likelihood of breach of peace is found in the summon. Hence, this criminal revision case is dismissed with cost of Rs.10,000/- for unnecessarily approaching this Court under Section 397 and 401 Cr.P.C and voluntarily refraining from participating in the enquiry proceeding initiated by the Revenue Divisional Officer in accordance with law. The revision petitioner is directed to pay the said cost of Rs.10,000/- (Rupees Ten Thousand only) to the High Court Legal Service



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3

Committee attached to this Bench. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1.The Sub Divisional Magistrate &
Revenue Divisional Officer, Thanjavur.

2.The Inspector of Police,
East Police Station,
Thanjavur.

3.The Secretary, High Court Legal Service Committee,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.P.VADIVEL, ADVOCATE IN SR NO.84859

CP

BU/NM/SV/SAR-IV :13.11.2018 : 3P/5C

Cr1.R.C(MD)No.531 of 2018

17.09.2018