

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	20.06.2019
Date of Order	27.09.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C (MD) No.29 of 2019

and

Crl.MP (MD) No.1167 of 2019

1.K.Muniyandi
2.S.Pandi
3.R.Selvaraj
4.S.Kannan
5.V.Ramachandran
6.C.Periyakaruppan
7.V.Thangapandi
8.R.Mookaiah
9.V.Nagaraj

: Revision Petitioners/Respondents

Vs.

1.The Revenue Divisional Officer,
Allinagaram,
Theni District.

2.The Inspector of Police,
Allinagaram Police Station,
Theni District.

3.V.Subbaiyan
4.K.Ganesan
5.S.Karikalan
6.A.Thangapandi
7.M.Ayyanar
8.A.Murugan
9.A.Krishnan
10.P.Agni
11.T.Muniyandi
12.P.Eswaran

: Respondents

Prayer: Criminal Revision has been filed under Section 397
r/w 401 of Criminal Procedure Code, against the order passed by the
1st respondent in MC No.4/2018/m4/dated 04.01.2019 and set aside the



same.

For Revision Petitioner

: Mr.C.M.Arumugam

For R1 and R2

: Mr.APG Ohm Chaira Prabhu
Government Advocate
(Criminal side)

For R3 to R12

: Mr.N.Tamilmani

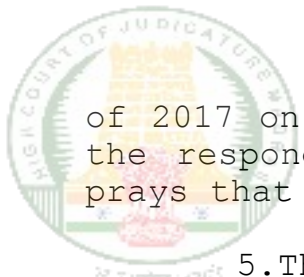
O R D E R

This Criminal Revision is directed against the order passed by the 1st respondent in MC No.4/2018/m4/dated 04.01.2019.

2.The 1st petitioner is the President of Allinagaram Deventhira Kula Uravinmurai Association, which was duly registered under the Tamil Nadu Societies Registration Act, 1975 on 03.08.2011. The objects of the said Association are to develop and enrich the welfare of the community people residing at Theni Allinagaram. As per the bye-law of the Society, the Executive Committee will be in power and continue for a period of either 3 years or for the period till the next Executive Committee assumes the office as enumerated under Section 11(2) of the bye-law. Pursuant to the completion of the period of three years of the previous Executive Committee, election was held and the newly elected Executive Committee members assumed office on 13.09.2017 and the members of the Executive Committee got registered filing Form-7 with the office of the Registrar, Periyakulam. That being so, on 22.02.2018, a case in Crime No.51 of 2018 was registered by the 2nd respondent police under Section 145 of the Criminal Procedure Code, arrayed as accused (B-Party) and referred the matter to the 1st respondent for further adjudication. Accordingly, the 1st respondent taken cognizance the case, referred by the 2nd respondent as MC No.4/2018/M and initiated proceedings by issuing summons to both parties. The petitioners also filed a suit in O.S.No.137 of 2016, which is pending before the District Munsif, Theni. However, the 1st respondent passed the impugned order. Aggrieved over the impugned order passed by the 1st respondent, the petitioners are before this court.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent 1 and 2 and the learned counsel appearing for the respondents 3 to 12 and perused the materials available on record.

4.The main contention raised on the side of the petitioners is that the order of the first respondent is totally against the ambit of Section 145 of the Criminal Procedure Code, as he has not recorded his subjective satisfaction and further, the first respondent failed to consider that a criminal case in Crime No.389



of 2017 on the file of the 2nd respondent was registered as against the respondents 3 to 12, which would show their illegal acts and prays that the criminal revision has to be allowed.

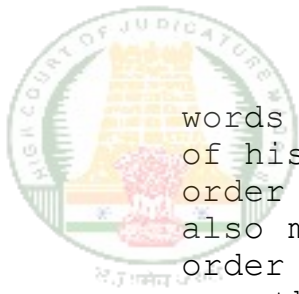
5.The impugned order passed by the first respondent was carefully perused. It was stated in the impugned order that there was dispute arose between A and B party in respect of the management of the properties belonged to Devendrakula Velalar Uravin Moorai and due to the dispute between them will cause disturbance to the public, the Inspector of Police, Alinagaram, registered a case in Crime No.51 of 2018 and therefore, the police officials requested the first respondent to take action against A and B Party as per Section 145 Crp.P.C.

6.The petitioners stated that for the dispute in respect of the management, one K.Muniyandi filed a suit O.S.No.137 of 2016 for injunction and still the suit is pending. But on the contrary, on the side of the respondents, it is stated that the suit O.S.No.137 of 2016 was dismissed. To prove it, the petitioners filed a copy of the extract of 'B' Diary. On perusal of 'B' Diary extract with regard to O.S.No.137 of 2016, it reveals that the suit is pending and not dismissed.

7.The learned counsel appearing for the petitioners submitted that there was already suit filed in respect of the properties belonged to Devandrakula Velalar Uravin Murai and hence, the first respondent has no right to pass any order in respect of the properties belonged to Devandrakula Velalar Uravin Murai and hence, the order passed by the first respondent has to be set aside. For that, the learned counsel appearing for the petitioner submitted the order of this court made in Crl.RC No.177 of 2015, dated 01.04.2015 (P.Sengodan Vs. Nagappan), wherein it has been held in para 26 and 29 as follows:-

26.In Peria Mannadha Goundar v. Marappa Goundar reported in AIR 1969 MAD. 411 = 1969 Crl.L.J. 1410 = 1969 (1) MLJ 37, this Court quashed a preliminary order, on the grounds that the Executive Magistrate has not stated the grounds for his satisfaction, as required under Section 145 of the Code. At Paragraph 8, this Court, observed as follows:

8. It is, therefore, necessary under Section 145 (1), Criminal Procedure Code, that the Magistrate having jurisdiction shall make an order in writing that he is satisfied either from a police report or other information that a dispute likely to cause a breach of the peace exists and state the grounds of his satisfaction before requiring the parties concerned in such dispute to attend his Court and put in written statements. This provision of making the order in writing and stating the grounds of his satisfaction appears to be mandatory. The



words "shall make an order in writing stating the grounds of his being so satisfied" would clearly indicate that the order must be in writing and the grounds for satisfaction also must be stated. Unless the grounds are stated in the order itself, it will be difficult to test the correctness or otherwise of the order passed by the Magistrate. So, the preliminary order should state clearly the reasons and grounds on which the satisfaction is based and that the Magistrate had applied his mind in passing the preliminary order. On the aspect of not mentioning the time, when the written statements are required to be filed or evidence adduced, after considering the decision in A.Khudiram Mandal's case, [AIR 1952 Cal. 713], this Court, at Paragraph 10, held that, This decision takes the view that the validity of the final order under Section 145 Criminal P. C. could not be set aside because of omission to state the grounds in the preliminary order as such omission will be only an irregularity. But from this decision, it is clear that if an objection is taken as in the instant case, at the earliest point of time, the preliminary order can be quashed. In the above reported case, the impugned order was passed one year, after the report and therefore, on the facts and circumstances of the case, this Court observed that, The preliminary order does not say that he had any further information subsequent to the report submitted by the police that the likelihood of a breach of peace continued and on the date of the preliminary order the dispute existed. A preliminary order passed long after the information the Magistrate had in respect of the breach of the peace cannot be sustained unless the Magistrate was satisfied from any further information or enquiry that a breach of the peace existed on the date of the preliminary order.

29. In *Gabrial Thanakayyan v. Narayana Nadar* reported in 1977 Crl.L.J. 1879, it has been held as follows:

On a careful reading of section 145 as a whole, particularly sub-section (1) it can be seen that every foundation of an action under the sub-section is the satisfaction of the Magistrate that a dispute likely to cause a breach of the peace existed on the date of the preliminary order, concerning the possession of any land or water or boundaries thereof situated within his or her local jurisdiction. It is only on being satisfied that there is a real dispute existing concerning the possession of immovable property and that such dispute is likely to cause the breach of peace that the Executive Magistrate



gets jurisdiction to initiate proceedings and pass a preliminary order under section 145 of the Code. This satisfaction he or she may get from a report of the police officer or upon other information. The Magistrate must be satisfied of the necessity to take action under section 145 of the Code, before a preliminary order is passed and it cannot be said that in every case such satisfaction would automatically follow from a report of the police officer or upon other information. The provision in the Sub-section that the Magistrate shall make an order in writing, slating the grounds of his satisfaction is mandatory. If the grounds are not stated in the order, it will be difficult to test the correctness and validity of the order."

8.In the case on hand, no report was filed by the Police Officer or other information that a dispute was likely to cause breach of peace concerning the properties mentioned in the section and there was no record to show that the first respondent satisfied with the police report or other information that the dispute was likely to cause breach of peace.

9.It is to be seen that already one K.Muniyandi filed O.S.No.136 of 2017 for injunction in respect of the property of Devandrakula Velalar Uravin Murai and it is still pending and once the Civil Court has seized the matter in respect of title or possession, procedure under Section 145 of the Civil Procedure Code cannot be countenanced. Hence, the order passed by the first respondent is liable to be set aside and accordingly, it is set aside.

10.In the result, the criminal revision is allowed. The impugned order passed by the first respondent is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Revenue Divisional Officer,
Allinagaram,
Theni District.



2.The Inspector of Police,
Allinagaram Police Station,
Theni District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-90280[F] dated 30/09/2019)

+1cc to Mr.C.M.Arumugam ,Advocate, SR.No.91125

CrI.RC (MD) No.29 of 2019
27.09.2019

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