



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.11.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.12125 of 2015
and
M.P. (MD)No.1 of 2015

P.Packiyanathan

... Petitioner/Respondent

Vs

1.The Sub Divisional Magistrate
cum Revenue Divisional Officer,
Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Palayamkottai,
Tirunelveli District,
Tirunelveli.

3.Arumainayagam Samraj
(R3 is impleaded as per the order
of this Court dated 19.02.2016 made
in Crl.M.P. (MD)No.1308/16
in Crl.O.P. (MD)No.12125 of 2015) ... Respondents/Complainants

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in M.C.No.2 of 2015 dated 17.03.2015 and its consequential order dated 30.04.2015 on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Tirunelveli, quash the proceedings.

For Petitioner : Mr.N.Mohideen Basha

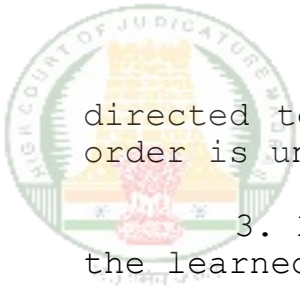
For R1 & R2 : Mr.A.Robinson

Government Advocate (Crl.side)

ORDER

The first respondent herein issued a provisional order against the petitioner on 17.03.2015 in respect of the pathway which according to the petitioner, is a private one, but which according to the authority, is a public pathway.

2. The petitioner, on 19.03.2015, showed cause against the said provisional order. The petitioner is aggrieved by the impugned order dated 30.04.2015 that the petitioner has been



directed to restore the possession that originally obtained. This order is under challenge in the criminal original petition.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl.side).

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4. The order impugned in this criminal original petition is liable to be set aside, since the authority has not followed the procedure laid down in Section 138 of Cr.P.C.,. The said provision clearly states that If the person against whom an order under section 133 is made appears and shows cause against the order, the authority shall take evidence in the matter as in a summons-case. In this case, it is obvious that this procedure was given a complete go-bye. Therefore, I am inclined to set aside the impugned order. It is accordingly set aside. This criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

5. The learned Government counsel(Crl.side) points out that nothing really survives for further adjudication in this case as the public pathway has already been restored. Therefore, the matter has to go back to the original authority for fresh consideration.

6. The matter is remitted to the first respondent who shall adhere to the procedure laid down in Section 138 of Cr.P.C., and pass orders afresh in accordance with law.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

Rmi

To

1.The Sub Divisional Magistrate
cum Revenue Divisional Officer,
Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Palayamkottai,
Tirunelveli District,
Tirunelveli.

+1 CC to Mr.N. MOHIDEEN BASHA, Advocate (SR-99795[F] dated
20/11/2019)

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and M.P.(MD)No.1 of 2015
20.11.2019