

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.29207 & 31180 of 2019

Samanthi

..Petitioner in both Crl.O.Ps

/versus/

1.The State rep.by
The Inspector of Police,
J10 Chemmancherry Police Station,
Chennai 600 119.
(Cr.No.382/2019)

2.M/s Serene Estates Private Limited,
Rep.by its Authorised Signatory,
No.103, Second Street,
Kumarasamy Nagar,
Solinganallur,
Chennai 600 119.

(R2 is impleaded as per order
in Crl.M.P.No.1699/2020
in Crl.O.P.no.29207/2019
dated 24/02/2020)

..Respondents in Crl.O.P.No.29207/2019

1.Revenue Divisional Officer,
South Chennai Division,
Guindy,
Chennai 600 032.

2.State by Inspector of Police,
J10, Chemmancherry Police Station,
Chennai 600 119.

3.Shri.Selvakumar, AGM,
Serene Estate, Classic Garden,
Kumarasamy Nagar, OMR,
Sholinganallur.

4.Shri.Prakash, Accountant,
Serene Estate, Classic Garden,
Kumarasamy Nagar,
Sholinganallur.

5.Shri.Krishnamoorthy,
Management,
Serene Estate,
Classic Garden,
Kumarasamy Nagar,
Sholinganallur.

..Respondents in CrI.O.P.No.31180 of 2019

PRAYER in CrI.O.P.No.29207 of 2019: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code to call for entire records in connection with the case in F.I.R. in crime No.382 of 2019 on the file of the respondent and quash the same.

PRAYER in CrI.O.P.No.31180 of 2019: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order dated 23rd October 2019 bearing file No.Na.Ka.No.A1/2047/2019 on the file of the Revenue Divisional Officer, South Chennai Division, Guindy, Chennai 600 032 under Section 145 of Cr.P.C.

CrI.O.P.No.29207 of 2019:

For Petitioner : Mr.A.Ramesh, Senior counsel
for Mr.D.Parventhan

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for R1

Mr.Inthu Karunakaran for R2

CrI.O.P.No.31180 of 2019:

For Petitioner : Mr.A.Ramesh, Senior counsel
for Ms.S.Deepika

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for R1& R2

M/s Inthukarunakaran for R3 to R5

COMMON ORDER

Crl.O.P.No.29207 of 2019 has been filed to quash the First Information Report in Crime No.382 of 2019 for the offence under Section 145 of Cr.P.C.

Crl.O.P.No.31180 of 2019 has been filed to quash the proceedings initiated under Section 145 of Cr.P.C. dated 23.10.2019.

2. The learned Senior counsel appearing for the petitioner submitted that on the complaint lodged by the second respondent/defacto complainant, the first respondent registered a First Information Report in Crime No.382 of 2019 for the offence under Section 145 of Cr.P.C alleging that the second respondent/Defacto complainant in Crl.O.P.No.31180 of 2019, owned a land admeasuring 25,906 sq.ft comprised in S.No.734/1, 735 situated at Sholinganallur Village, Kancheepuram District. While being so, the petitioner and others trespassed into the property and tried to occupy the same. Though both the parties were directed to approach the Civil Court for appropriate relief, both the parties are disputed about their possession and enjoyment of the above said property. Therefore, the 1st respondent inspected the property and found that there is a chance for law and order problem and as such registered the case under Section 145 of Cr.P.C and forwarded the same to the Revenue Divisional Officer to initiate the proceedings under Section 145 of Cr.P.C.

3.He further submitted that the First Information Report is not at all maintainable under law since the offence under Section 145 of Cr.P.C., could not attract any offence under the Indian Penal Code. The Police Officer registering the First Information Report under Section 145 of Cr.P.C. shall take cognizance of any offence, but in the case on hand, the likelihood of commission of an offence is not the public entered therein. Further, on receipt of the complaint, the first respondent without even conducting any enquiry straight away registered a First Information Report that too under Section 145 of Cr.P.C. There is no subjective satisfaction mentioned in the First Information Report and there is no nuisance expressed and therefore, the First Information Report is liable to be quashed.

4.In support of his contention, he relied upon a judgment reported in Manu/AP/0211/2010 (K.Guravaiah and Ors. v. The State of Andhra Pradesh and Ors.) passed in Crl.P.No.3564 of 2010. dated 29.04.2010, wherein the High Court of Andhra Pradesh at Hyderabad has held as follows:-

5.Section 145 Cr.P.C does not contain a

penal provision much less deal with any type of offence whether cognizable or non-cognizable. Section 145 Cr.P.C prescribes procedure to be followed where dispute concerning immovable property or water is likely to cause breach of peace. under Section 145(1) Cr.P.C, the Executive Magistrate passes an order in case the Executive Magistrate is satisfied from "a report of a police officer or upon other information" that a dispute likely to cause a breach of peace exists. Thus, in proceedings under Section 145 Cr.P.C., the police officer is the complainant or the informant to the Executive Magistrate. When the Police Officer is the complainant or the informant and is not the officer who receives information, then question of registering the said information under Section 154 Cr.P.C does not arise at all. The police officer acting under Section 154 Cr.P.C is at the receiving end with reference to the information. Whereas a police officer in proceedings under reference to the information. Therefore, question of registering a crime under Section 154 Cr.P.C. and forwarding FIR to the Magistrate under Section 157 Cr.P.C does not arise in case of proceedings under Section 145 Cr.P.C.

8. Having regard to above discussion of various provisions of the Code of Criminal Procedure, 1973, it follows that Inspector of Police, Kurnool II Town Police Station has exceeded his powers under the Code in issuing FIR in Crime No.91 of 2010 in a matter relating to proceedings under Section 145 Cr.P.C and it is liable to be quashed on this ground alone irrespective of merits of contents therein.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that on the complaint lodged by the 2nd respondent, 1st respondent registered the case and referred the matter to the Revenue Divisional Officer under Section 145 of Cr.P.C. Though in the First Information Report, it is stated in the column of offence as 145 of Cr.P.C., the entire content means only with reference to Section 145 of Cr.P.C. After enquiry, the Revenue Divisional Officer also passed an order thereby directing the Tahsildar concerned to take appropriate action to maintain the law and order problem and also directing the Tahsildar to give proper direction to the concerned police authority to take appropriate

action on the law violators. Therefore, he prayed for dismissal of the quash petition.

6. Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the 2nd respondent.

7. On the complaint lodged by the 2nd respondent, the 1st respondent registered a First Information Report in Crime No.382 of 2019 for the offence under Section 145 of Cr.P.C., thereby referred the matter to the Revenue Divisional Officer to initiate action under Section 145 of Cr.P.C. Though the First Information Report registered in Crime No.382 of 2019 for the offence under Section 145 of Cr.P.C., the First Information Report has been forwarded to the Revenue Divisional Officer to conduct an enquiry under Section 145 of Cr.P.C.

8. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the First Information Report, cannot be registered, without attracting any offence with ingredients and the First Information Report itself is not at all maintainable under Section 145 of Cr.P.C. Initially, on receipt of the complaint, after inspection of the disputed property and if warranted, the concerned police officer can forward the complaint to initiate the proceedings under Section 145 of Cr.P.C to the concerned Executive Magistrate.

9. In the case on hand, the first respondent, immediately on receipt of the complaint, registered the case for the offence under Section 145(1) of Cr.P.C.

Section 145(1) of Cr.P.C reads as below:

145. Procedure where dispute concerning land or water is likely to cause breach of peace: (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

10. It is a procedure to be followed when there are disputes,

concerning land or water is likely to cause breach of peace. The Revenue Divisional Officer conducted an enquiry and passed the order which is under challenge in CrI.O.P.No.31180 of 2019. By an order dated 23.10.2019, the Revenue Divisional Officer directed the Tahsildar to maintain law and order problem and give proper advice to the concerned police authority. Section 145 of Cr.P.C. does not contain the Penal provision much less deal with any type of offence whether cognizable or non-cognizable. Therefore, the judgment cited by the learned Senior Counsel appearing for the petitioner is squarely apply to the case on hand. Accordingly, the First Information Report is nothing but a clear abuse of process of law and it cannot be sustainable and it is liable to be quashed. Hence, the First Information Report is quashed.

11. In the result, CrI.O.P.No.29207 of 2019 is allowed.

12. In view of the order passed in CrI.O.P.No.29207 of 2019, the impugned order in CrI.O.P.No.31180 of 2019 cannot be sustained. In this regard, the learned Senior Counsel appearing for the petitioner relied upon a judgment in CrI.R.C.No.582 of 2006 dated 14.03.2008 reported in Manu/TN/2047/2008 (Jayaprakash Samantaray v. State and Ors.), wherein paragraph Nos.7 to 9 reads as below:

"7. There are three fundamental requisites to maintain an order under Section 145, Criminal Procedure Code are needed and they are, (1) there must be a report of a police officer or other information that a dispute was likely to cause breach of peace concerning the property mentioned in the section; (2) the Magistrate must be satisfied with such police report or other information that the dispute was likely to cause breach of peace; and (3) on the satisfaction of the Magistrate, he must make an order in writing stating the grounds for satisfaction in the order, under Section 145(1) Criminal Procedure Code.

8. Merely a Magistrate stating that he is satisfied from a police report or other information that a breach of peace was likely to be caused, he is recording the fact of his satisfaction but not the grounds of his satisfaction. The Order, therefore, must indicate the grounds for finding that there was likelihood of breach of peace and any non-compliance, certainly vitiates the preliminary order which is passed under Section 145(1)

Criminal Procedure Code.

9.This Court finds that there is a non-compliance with the provision of Section 145(1) Cr.P.C in the impugned Order and therefore the order passed by the learned Sub-Divisional Magistrate is unsustainable."

13. This Court to sustain the order passed under Section 145 of Cr.P.C., there must be a report of the police officer or other information that a dispute was likely to cause breach of peace concerning the property mentioned in this Section. In the case on hand, the first respondent, namely, the Revenue Divisional Officer, on receipt of the First Information Report from the 2nd respondent, mechanically directed the Tahsildar to maintain the law and order problem and give proper advice to the concerned police authority namely, the 2nd respondent herein. Therefore, the impugned order was passed by the 1st respondent, without even conducting any enquiry. Further, no notice was ordered and no opportunity of hearing was given to either of the parties and as such, the impugned order is liable to be set aside. Further, no preliminary order under Section 145(1) Cr.P.C. was passed by the first respondent before passing the impugned order. Therefore, the impugned order cannot be sustainable. Accordingly, Crl.O.P.No.31180 of 2019 is allowed.

14.However, the learned counsel appearing for the 2nd respondent submitted that already they filed a suit in which they have obtained interim injunction in their favour in respect of the disputed property. Therefore, the parties concerned are at liberty to approach the civil Court concerned for appropriate relief in respect of the disputed properties. It is also made clear that the order passed by this Court is not an impediment for the parties concerned to put forth their case before the Civil Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Inspector of Police,
J10 Chemmancherry Police Station,
Chennai 600 119.

2.The Revenue Divisional Officer,
South Chennai Division,
Guindy,
Chennai 600 032.

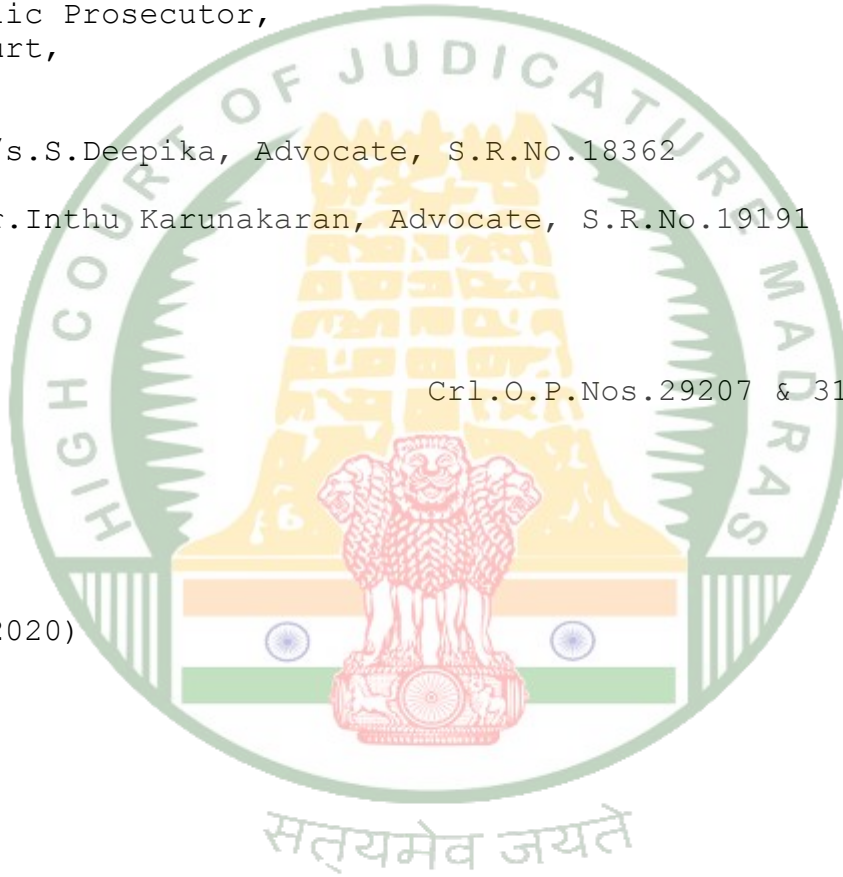
3.The Public Prosecutor,
High Court,
Madras.

+1cc to M/s.S.Deepika, Advocate, S.R.No.18362

+1cc to Mr.Inthu Karunakaran, Advocate, S.R.No.19191

CrI.O.P.Nos.29207 & 31180 of 2019

SSD(CO)
RN(05/06/2020)



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