



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.09.2020

DELIVERED ON : 09.09.2020

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.287 of 2020

and

Crl.M.P.(MD)Nos.2446 and 4042 of 2020

P.Saravanan

.. Petitioner / B-Party

Vs.

1.The Sub Divisional Magistrate and Revenue Divisional Officer,
Madurai Collector office complex,
Madurai.

2.The Tahsildar (West),
Madurai West Tahsildar office,
Virattipattu,
Madurai - 16.

3.The Inspector of Police,
C4 - Thilagar Thidal Police Station,
Madurai.

Crime No.418 of 2019
Respondents 1 to 3

... Respondents 1 to 3 /

4.P.Madhupandian

5.Rajalakshmi

6.P.Malathi

... Respondents 4 to 6 / A-Party

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records relating to the order passed in R.O.C.No.4627/2019M on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Madurai dated 10.02.2020 and to set aside the same as illegal.

For Petitioner : Mr.J.Jeyakumaran

For Respondents 1 to 3 : Mrs.Anandha Devi
Government Advocate (Crl. Side)



ORDER

This petition has been filed to set aside the order passed in R.O.C.No.4627/2019M dated 10.02.2020, on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Madurai.

WEB COPY

2.The Inspector of Police, Thilagar Thidal Police Station has lodged a complaint in Crime No.418 of 2020 and referred the same to the first respondent. In R.O.C.No.4627/2019 M, the Revenue Divisional Officer passed an order on 10.02.2020 under Section 145 Cr.P.C. Against that order, the revision petitioner preferred this revision.

3.Brief substance of the petition is as follows:-

The petitioner is a disabled person running a tyre shop by name and style as "Saravanan Tyres" in door no.31/1, workshop road, Simmakal, Madurai. The petitioner lodged a complaint before the third respondent Police on 21.12.2019 and the FIR in Crime No.5 of 2020 was registered under Section 147, 148, 506(ii) and 379 of IPC on 02.01.2020 The first accused is the petitioner's elder brother, his wife is the second accused, the mother of the petitioner is the third accused and A4 to A7 are the employees of the first accused. The petitioner and his elder brother jointly purchased the property in the name of the petitioner and his elder brother, both their wives and their mother, Rajalakshmi. On the instigation of the elder brother, the revision petitioner and other members entered into a settlement on 14.09.2018 in which, the building in door no.31/1, Workshop road with four floors was allotted to the petitioner. Six properties were allotted to the elder brother and one property was allotted to the sister, Malathi and one property was allotted to the mother. The elder brother trespassed into the property of the petitioner and committed theft of tyres worth of Rs.3,00,000/- (Rupees Three Lakhs only) and the investigation is pending.

4.On the instigation of the elder brother, the Inspector of Police, by name, Flower Sheela registered a FIR and referred the matter to the first respondent herein. The first respondent summoned all the parties. The petitioner filed a statement pointing out the pendency of of the civil proceedings and questioned the jurisdiction of the first respondent. The civil Court alone is competent to decide the question of the title and possession in a disputed private party. But the first respondent has made an observation that the fourth respondent is entitled for possession of the property and further directed the Inspector of Police to close the shop and to keep it under lock and key.

5.The fourth respondent already filed a suit in O.S.No.489 of 2018 for a prayer of injunction and his interlocutory petition in I.A.No.635 of 2018 was already declined by the trial Court.



6.The first respondent exceeds his power and interferes into the civil rights of the parties and decided the title without any authority of law. The impugned order was passed on 10.02.2020 and the order copy was served on the respondents on 11.02.2020 and the order copy was served on the petitioner only on 14.02.2020 at about 03.30 p.m. Even without permitting the petitioner to take his belongings, the respondents came to the shop and locked the shop. The petitioner filed W.P.(MD)No.3360 of 2020 and the same was dismissed on 04.03.2020 by the Writ Court with liberty to file revision petition before this Court. Hence, the petitioner preferred this revision.

7.Brief substance of the counter filed by the third respondent is as follows:

One Pitchai Chettiar was doing tyre business in the rental building at door no.18, workshop road, Simmakal, Madurai. He has two sons and a daughter, namely the fourth respondent, the petitioner and the sixth respondent. The said Pichai Chettiar died on 23.04.2008. After his demise, his wife Rajalakshmi and his two sons were jointly running the business.

8.They jointly purchased a site with an extent of 2200 sq. ft. in T.S.No.1243, D.No.31/1 situated at Workshop road, Madurai on 19.09.2008 and subsequently they shifted the materials and machineries worth about Rs.67,50,000/- from the rented building to the said building. The fourth respondent purchased a site with an extent of 1500 sq. ft. bearing door no.29, workshop road, madurai.

9.On the request of the petitioner, a partition was held in the presence of elders and well wishers on 20.07.2018, the materials and machineries were valued at Rs.67,50,000/- and it was decided that the fourth respondent has to give Rs.33,75,000/- towards the half share of the materials to his brother P.Saravanan and the petitioner has to manage the business of "S.P.Saravanan Tyres" and the fourth respondent has to manage the "S.P.Saravanan Tyres Unit II". To that effect a partition agreement was also entered into between them in the presence of elders.

10.As per the agreement, the fourth respondent gave a sum of Rs.21,54,000/-. Thereafter the petitioner and his wife demanded to hand over unit no.II to the petitioner. Both the parties picked up the quarrel from 22.07.2018 onwards. Both the parties used to file various complaints against each other before the third respondent and in this connection CSR. No.167 of 2018(27.07.2018), 358 of 2018 (25.12.2018), 64 of 2019(02.03.2019), 80 of 2019 (15.03.2019) were registered and after enquiry, the said complaints were closed.

11.The petitioner herein filed a petition before the learned Judicial Magistrate No.II, Madurai in Cr.M.P.No.4660 of 2018 and



based on the order dated 15.11.2018, the third respondent registered a FIR in Crime No.950 of 2018 under Sections 120(b), 294(b), 463, 464 and 506(i) of IPC. After investigation, on 27.12.2018, FIR was closed as 'Mistake of facts'.

12. Based on the complaint made by the fourth respondent, the third respondent registered a case in Crime No.20 of 2019 for the offence under Sections 448, 294(b), 323 and 506(ii) of IPC. The third respondent arrested the wife of the petitioner on 14.01.2019 and the said Vijayalakshmi took a small pen knife kept in her handbag and tried to injure herself. When woman Grade I Police Constable Krishnaveni tried to prevent her, the said Vijayalakshmi caused the woman police cut injuries. The women constable lodged a complaint in Crime No.26 of 2019 under Sections 294(b), 353, 332 and 506(ii) of IPC.

13. On 30.05.2019, both the parties complained against each other and FIR in Crime No.319 of 2019 for an offence under Section 294(b) and 323 of IPC and Crime No.320 of 2019 for an offence under Section 294(b), 323 @ 294(b) of IPC were registered and are pending. As there was a possibility for a law and order problem, the third respondent registered a FIR in Crime No.418 of 2019 under Section 145 of Cr.P.C., against both the parties and forwarded the same to the first respondent for necessary action.

14. The first respondent initiated proceedings in R.O.C.No.4627/2019 M, after providing opportunity to both the parties, conducted enquiry and after careful consideration of documents, he came to the conclusion that though already a civil suit was instituted in O.S.No.489 of 2019 and pending before the learned Principal District Munsif, Madurai Town, there was a law and order problem affecting public peace and tranquility relating to the property in door no.31/1, workshop road, madurai. If the petitioner was keeping hold of the property in the meantime and refuses to hand over the property, the third respondent was directed to close the premises and kept it under lock and key. Only after detailed enquiry and careful consideration, the order was passed by the first respondent herein.

15. The status report filed by the third respondent reads as follows:

The four CSRs, which were registered against both the parties were closed after enquiry and as per the direction of the learned Judicial Magistrate No.II, Madurai in Crl.M.P.No.4660 of 2018, a case was registered in Crime No.950 of 2018 under Sections 120(b), 294(b), 463, 464 and 506(i) of IPC and then the case was closed as 'mistake of fact'. On 12.01.2019, the fourth respondent preferred a complaint and a case in Crime No.20 of 2019 under Sections 448, 294 (b), 323, 506(i) of IPC was registered.



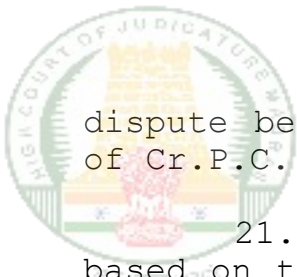
16. On 14.01.2019, the third respondent Police received an emergency call (100) and on that basis, Vijayalakshmi wife of the petitioner was taken to the police Station. She inflicted self injuries and also caused injuries to a women grade I Constable namely, Krishnaveni. On the complaint preferred by the aforesaid injured women Constable another case in Crime No.26 of 2019 under Sections 294(b), 353, 332 and 506(ii) of IPC was registered. Since the said Vijayalakshmi was accused in Crime No.20 of 2019, she was remanded to Judicial custody. The said Vijayalakshmi preferred a writ petition in W.P.(MD)No.5508 of 2019 against the respondent police. This Court allowed the writ petition vide order dated 18.10.2019.

17. Both the parties preferred complaints against each other and Crime No.319 of 2019 under Sections 294(b) and 323 of IPC and Crime No.320 of 2019 under Sections 294(b), 323 of IPC were registered. Due to prolonged dispute and frequent quarrels between the parties, there was continuous law and order problem and a case in Crime No.418 of 2019 under Section 145 of Cr.P.C., was registered and referred to the first respondent. The revision petitioner restrained the other rental persons in the same building namely, Ramesh and Maheswari from entering into the disputed premises. The first respondent passed an order vide proceedings in R.O.C.No.4627 of 2019M on 10.02.2020. Against which, the petitioner preferred the present revision petition.

18. Based on the order of interim stay passed by this Court in Crl.M.P.(MD)No.2443 of 2020 dated 05.06.2020, the revision petitioner got back the key of the aforesaid disputed shop and has reopened it.

19. On the side of the petitioner, it is stated that civil suits including a partition suit are pending regarding the suit properties. It is stated that the fourth respondent filed a suit for bare injunction wherein he filed a petition in I.A.No.635 of 2018 for interim injunction. It was declined by the trial Court. Having failed to get injunction, he used illegal methods and with the help of the respondents 1 and 2, he was able to get the impugned order against the petitioner and thereby trying to evict the petitioner.

20. On the side of the petitioner, it is stated that a FIR was registered against the petitioner's wife. She was arrested after sunset. She filed W.P.(MD)No.5508 of 2019 and the writ petition was allowed and the respondent Police was ordered to pay a cost of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner's wife. When the writ petition was pending before this Court, this FIR was registered by the third respondent. Even in the FIR, the pendency of the civil suits between the parties was mentioned. The prayer in the FIR referred to the first respondent was to settle the partition



dispute between the parties, which will not come under Section 145 of Cr.P.C.

21. On the side of the petitioner, it is stated that only based on the FIR, the first respondent conducted enquiry and passed an order on 10.02.2020. The first respondent has no right to give a findings that the fourth respondent is entitled for possession. Further more the first respondent has passed an order directing the petitioner to hand over possession and that if he refused to hand over possession, the third respondent was directed to lock down the shop. On the basis of the order of the first respondent, the third respondent locked the premises on 14.02.2020. When two civil suits are pending, the first respondent has no powers to pass such an order.

22. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of ***Amresh Tiwari v. Lalta Prasad Dubey and another*** reported in ***AIR 2000 SC 1504***, wherein it is stated as follows:

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us."

23. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***V. Jeyachandran @ Chandran v. the Sub Divisional Magistrate and Revenue Divisional and others*** reported in ***(2002) MLJ (crl.) 850***, wherein it is stated as follows:

"It is settled position of law that when once the civil Court had taken note of the dispute between the parties with reference to the declaration or possession, then it is not open to the Executive Authority to entertain any application. Further more, to invoke Section 145 of Criminal Procedure Code, there should be a report from the competent police Officer alleging that there was any threat to law and order or there is any possibility of breach of peace in that area. Admittedly, no such report has been given by any police officials so as to enable the first respondent to issue such notice."

24. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of ***K. Jaganathan and others***



v. The Revenue Divisional Officer and others in **W.P.No.7866 of 2018**, wherein it is stated as follows:

"11. In the present case, it was a private dispute between the 1st and 2nd petitioners and the 2nd respondent. This dispute will not fall within the scope of Section 145 of Cr.P.C. The 1st respondent ought not to have usurped the jurisdiction of Civil Court and decided the rival rights of the parties. The 1st respondent did not have the jurisdiction to issue directions to the petitioners to evict the tenant and to put the 2nd respondent in possession of the property. The impugned order passed by the 1st respondent is an illegality on the face of it and it requires the interferences of this Court."

25.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Amresh Tiwari v. Lalta Prasad Dubey and another** in **(2000) AIR (SCW)1467**, wherein it is stated as follows:

"Section 145 - proceedings under - Pendency of civil litigation - effect - proceedings under Section 145 cannot be allowed to be continued."

26.On the side of the fourth respondent, it is stated that there were 6 tenants in the premises and the shop was run by the fourth respondent. The petitioner being a physically challenged person agreed for the fourth respondent to run the family business and to share the profit at a ratio of 60:40 and other family members are also entitled for the property. The petitioner wrongly dispossess the fourth respondent. There was law and order problem. In order to set right the law and order problem, it was necessary for the first respondent to pass an order immediately. The jurisdiction of the first respondent cannot be questioned. Though civil suits are pending, if public peace and tranquility is affected, the first respondent can pass an order under Section 145 Cr.P.C.

27.The learned counsel for the fourth respondent would rely upon the judgment passed by this Court in the case of **A.Dhaveethu v. The District Collector and others** reported in **(2016) 4 CTC 12**, wherein it is stated as follows:

"63.In the light of the above discussion, we answer the questions posed by the learned Judge as follows:-

'1.Though the Executive Magistrate is required to pass a preliminary order under Section 145(1), the absence of the same will not vitiate his final order under Section 145(4) of the Code.

2.The failure of an Executive Magistrate to



pass a preliminary order under Section 145(1) of the Code is a mere irregularity and will not affect his jurisdiction.

3.Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.

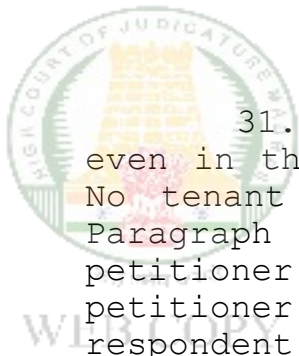
4.The aggrieved parties are empowered to move the very same Authority for reviewing his decision or in its absence, move the competent civil Court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases, they can move this Court for a judicial review either under Section 397 of the Code or under Article 226/227 of the Constitution.'"

28.The learned counsel for the fourth respondent would rely upon the judgment passed by this Court in the case of ***K.M.Abdul Wahab and others v. M.A.Nagoor Meeran and others*** reported in ***Crl.R.C.No.1105 of 2018***, wherein it is stated as follows:

"6.Unfortunately, without dealing with the aspect of the possession, 6th respondent has passed final orders without adverting to the various materials, which were placed for consideration, while deciding the factum of possession at the time of dispute. The Executive Magistrate/6th respondent has merely directed the parties to obtain appropriate relief from the Civil Court without making any reference to the factum of possession by either party A or B. According to the learned counsel, on the day, when the dispute arose between the parties, which gave rise to filing criminal case under Section 145 Cr.P.C., the petitioners/A-party was in possession and they were wrongfully dispossessed and in which event the petitioners herein ought to have been restored with the possession by the 5th respondent."

29.On the side of the fourth respondent, it is stated that the first respondent has not decided anything regarding the title and the order of the first respondent is only to maintain peace and tranquility. There are so many police complaints between the parties and the other tenants have also filed writ petitions. Since the wife of the petitioner created law and order problem, the case was referred to the first respondent.

30.On the side of the petitioner, it is stated that the police arrested his wife after sunset and that the police was directed to pay a cost of Rs.50,000/- to the wife of the petitioner in the writ petition. Due to that personal vengeance, this case was referred to the first respondent by the Police.



31. On the side of the petitioner, it is further stated that even in the FIR, there was no complaint regarding breach of peace. No tenant was called upon by the first respondent for enquiry. Paragraph no.2 of the impugned order clearly reveals that the petitioner was in possession. There was no report that the petitioner dispossess his brother or the tenants. Only the fourth respondent with the help of the third respondent is trying to dispossess the petitioner. The reply sent by the third respondent under RTI clearly reveals that there was no such complaint from the public on the alleged date of occurrence. The copy of the reply under the RTI Act was also filed in the additional type set.

32. On the side of the fourth respondent, it is stated that the third respondent should be impleaded in her individual capacity by mentioning the name of the Inspector of Police.

33. On the side of the respondents 1 to 3, it is stated that there is a dispute regarding the family properties. There were complaints and counter complaints by both the parties. 10 FIRs were registered and 20 csr were closed. Only due to law and order problem, the order was passed by the first respondent and a status report was also filed by the third respondent.

34. Heard the submissions of the learned counsel for the petitioner and the learned Government Advocate (Crl. side) for the respondents 1 to 3.

35. The FIR did not disclose any law and order problem in the disputed premises on 16.07.2019. The reply received through the RTI clearly reveals that there was no such complaint before the Police regarding any law and order problem on the particular date of occurrence.

36. The case and counter case filed by both the parties was on 30.05.2019 and not on 16.07.2019. In paragraph no.4(f) of the impugned order, it is stated that there was a commotion on the evening of 14.01.2019. This reveals that there was no law and order problem to be immediately settled by the Revenue Divisional Officer.

37. When there was no law and order problem on the particular date of occurrence, the matter was referred to first respondent by the third respondent. In the FIR registered by the third respondent, there was no allegation against the revision petitioner that he locked a portion of the premises and he prevented some of the tenants of the fourth respondent from getting out of the premises. The prayer in the FIR was to settle the property dispute, which is not maintainable under Section 145 of Cr.P.C.

38. In the impugned order, it is stated that the first respondent visited the property and conducted a discreet enquiry



under Section 148 of Cr.P.C. Who were the witnesses examined by the first respondent what was their statement were not specifically stated in the report.

39.A perusal of the order of the first respondent reveals that the first respondent has not examined any witnesses. Only based on the report of the Inspector of Police and based on the submission of the fourth respondent, the first respondent has passed this order. Paragraph no.4(h) of the impugned order clearly reveals that the decision of the first respondent was only based on the information given by the third respondent. Except the alleged oral information from the third respondent, there is no other evidence regarding any law and order problem in that area.

40.The first respondent in his order in paragraph no.4 has given a finding that "the fourth respondent was in possession and enjoyment of the property". The reasons stated for this decision is the information given by the third respondent. The wording in the second paragraph of the findings of the first respondent "in case the said Saravanan was keeping hold of the property" clearly reveals that the first respondent was not sure, who was in possession of the property at that time.

41.The first respondent has not conducted proper enquiry and he has not examined any witnesses. Observation that "the fourth respondent is entitled for possession" is unwarranted when a civil case is pending. When there is no complaint regarding any law and order problem on that particular date, without examining any witness, without recording the statement of witness, without giving an opportunity for the petitioner, the first respondent has passed the impugned order. In the above circumstances, the impugned order is liable to be set aside.

42.In view of the above, this Criminal Revision Case is allowed and the order passed in R.O.C.No.4627/2019M dated 10.02.2020, on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Madurai is set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Sub Divisional Magistrate and Revenue Divisional Officer,
Madurai Collector office complex,
Madurai.

2.The Tahsildar (West),
Madurai West Tahsildar office,
Virattipattu,
Madurai - 16.

3.The Inspector of Police,
C4 - Thilagar Thidal Police Station,
Madurai.

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

+1 CC to M/s.J. JEYARAMAN, Advocate (SR-16296[F] dated 09/09/2020)

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-16591[F] dated 11/09/2020)

Crl. R.C.(MD)No.287 of 2020
09.09.2020

Mrn

SDS (17.09.2020) 11P-7C