

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.918 of 2020
and Crl.M.P.No.6432 of 2020

1.Vengatesan
2.M.Karunagaran
3.Nagendran
4.Santhanakrishnan
5.Gopalakrishnan
6.Megavarman ... Petitioners

..vs..

1.The Executive Magistrate
and Revenue Divisional Officer,
Tiruvallur.
2.The Inspector of Police,
T-16, Nasaratpet Police Station,
Chennai - 600 123.
3.Mr.Rajamani
4.Egambaram
5.Devarajan ... Respondents

Criminal Revision Case filed under Section 397 and 401 Cr.P.C, to call for the records relating to the proceedings in Na.Ka.1224/2020/A1 dated 29.09.2020 on the file of the 1st respondent and set aside the same.

For Petitioners : Mr.R.Bharath Kumar

For Respondents: Mr.T.P.Savitha
Government Advocate (Crl.Side)
for R1 and R2
Mrs.C.R.Rukmani
for R3 to R5

O R D E R

This Criminal Revision Case has been filed against the proceedings in Na.Ka.1224/2020/A1 dated 29.09.2020 on the file of the first respondent.

2.The case of the petitioners is that the first petitioner herein lodged a complaint dated 02.06.2020 before

the second respondent Police against the respondents 3 to 5, which was assigned as C.S.R.No.182 of 2020. On coming to know about the same, in order to circumvent the criminal prosecution, the third respondent herein had lodged a complaint, which was assigned as C.S.R.No.183 of 2020. Subsequently, the second respondent Police conducted an enquiry and advised the parties to approach the Civil Court for appropriate remedy. However, the respondents 3 to 5 again started to dispose the movables in the said properties, the first petitioner again lodged a complaint dated 21.06.2020, which was assigned as C.S.R.No.200 of 2020 and the second respondent warned the respondents 3 to 5 to refrain from their illegal activities. However, they refused to refrain from their activities, hence, the second respondent Police registered the First Information Report in Crime No.667 of 2020 under Section 145 of Cr.P.C and forwarded a copy of the F.I.R to the first respondent for further proceedings.

3.In pursuant to the registration of the F.I.R, the Tahsildar, Poonamallee has conducted an enquiry on 08.09.2020. Based on the report submitted by the Tahsildar, the first respondent herein without following the provisions of Section 145 Cr.P.C passed an impugned order dated 29.09.2020 in Na.Ka.No.1224/2020/A1, without application of mind by determining the rights unilaterally in favour of the respondents 3 to 5. Aggrieved over the said order, the petitioners are before this Court with the present Criminal Revision Case.

4.The learned counsel for the petitioners would submit that the first respondent has failed to consider the fact that Civil Suit in O.S.No.266 of 2019 is pending between the parties before the learned District Munsif, Poonamallee and passed the impugned order. He would further submit that as per Section 145 Cr.P.C., the Executive Magistrate/the first respondent herein has to satisfy 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, should make an order in writing upon satisfied and require the parties to attend the Court and to put in written statements of their respective claims with regard to the dispute. However, in the present case, the first respondent without following the procedures as prescribed under Section 145 Cr.P.C. passed the impugned order and hence, the same is liable to be set aside.

5.In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Apex Court in M/s.Kranti Associates Pvt.Ltd & Anr Vs. Masood Ahmed Khan & Ors reported in 2011 (273) ELT 345 (SC), wherein formulated certain principles to be followed by the quasi-judicial authority with regard to recording of reasons in support of its conclusion while passing an order. However, the same was not followed in the present case.

6. In the case of R.Thiagarajan V. K.Angamuthu reported in 1996-2-L.W.(Crl.) 615, this Court held as follows:

"the enquiry under Section 145 Cr.P.C should be initiated only when the mandatory provisions of Section 145(1) Cr.P.C has been complied with by passing a preliminary order giving out all the necessary details and reflecting the grounds of satisfaction arrived at by the Magistrate, otherwise the entire proceedings would be illegal."

However, the first respondent without satisfying herself with regard to actual dispute and not discussing anything about the possibility of the breach of peace and even without passing of the preliminary order has passed the impugned order by unilaterally determining the rights in favour of the respondents 3 to 5, which is per se illegal. Therefore, the impugned order is liable to be set aside.

7. The learned Government Advocate (Crl.Side) for the respondents 1 and 2 would submit that the first respondent/Executive Magistrate and Revenue Divisional Officer, Tiruvallur has satisfied with the averments made in the letter of the second respondent Police and the report of the Tahsildar, Poonamallee and also considering the materials and passed the impugned order. There is no ground to set aside the impugned order and hence, the present revision is liable to be dismissed.

8. Heard the learned counsel on either side and perused the materials available on record.

9. Admittedly, the first petitioner filed a complaint before the second respondent Police against the respondents 3 to 5. Subsequently, the third respondent also filed the complaint against the petitioners. Thereafter, the second respondent Police conducted an enquiry and advised the parties to approach the Civil Court for appropriate remedy. However, the respondents 3 to 5 again started to dispose the movables in the said properties, the first petitioner again filed the complaint dated 21.06.2020 and the second respondent warned the respondents 3 to 5 to refrain from their illegal activities. However, they refused to refrain from their acts, the second respondent registered the First Information Report in Crime No.667 of 2020 under Section 145 of Cr.P.C and forwarded the copy of the F.I.R to the first respondent for further proceedings. Based on the enquiry conducted by the Tahsildar, Poonamallee, the first respondent passed the impugned order.

10. On a careful reading of the impugned order passed by the first respondent, it reveals that the said authority without following the procedures contemplated under Section 145 (1) Cr.P.C., has decided the rights of the parties and also without passing the preliminary order has straight away passed the final order.

11. It is settled proposition of law that the principle object of Section is, therefore, to preserve the peace and not to determine the rights and title of the parties. The enquiry under Section 145 Cr.P.C confined to the question of actual possession only, the Magistrate cannot enquire into the right of the parties. In proceedings under Section 145 Cr.P.C., the Magistrate has to decide the question of possession without reference to the merits of the claims of any of the parties to a right to possess the subject matter of the dispute, where he considers such merits of the title of the parties, he exceeds his jurisdiction.

12. In the present case, the first respondent without applying his mind and followed the procedures as contemplated under Section 145(1) Cr.P.C and passed the impugned order and decided the right of the parties.

13. In the light of the above facts, the impugned order dated 29.09.2020 passed in Na.Ka.No.1224/2020/A1 by the first respondent is liable to be set aside. Accordingly, it is set aside and the matter is remitted back to the first respondent, who shall pass orders afresh, in accordance with law as contemplated under Section 145 Cr.P.C and also directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

14. With the observations, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Executive Magistrate
and Revenue Divisional Officer,
Tiruvallur.

2. The Inspector of Police,
T-16, Nasaratpet Police Station,
Chennai - 600 123.

3.The Public Prosecutor,
High Court, Madras.

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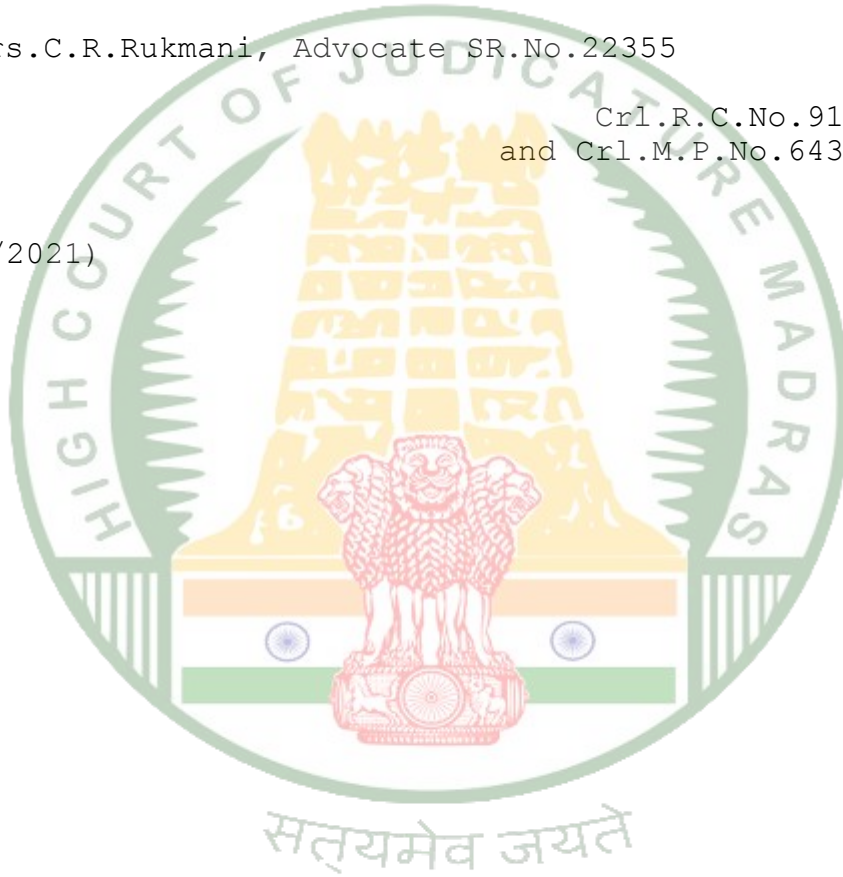
The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.22272

+1cc to Mrs.C.R.Rukmani, Advocate SR.No.22355

Cr1.R.C.No.918 of 2020
and Cr1.M.P.No.6432 of 2020

SV(CO)
GMY(02/07/2021)



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