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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

Criminal Revision Case No.961 of 2021
& CrI.M.P.No.12938 of 2021

- 1.Parvez
- 2.Abbas
- 3.Mohammed Farooq
- 4.Umar Farooq
- 5.Nagore Meeran

... Petitioners/A party

Versus

1. J.Hariharan ... 1st Respondent/
B party
2. S.Khader Sheriff ... 2nd Respondent/
A party
3. Sub Divisional Magistrate and
Revenue Divisional Officer,
Kancheepuram. ... 3rd Respondent/
Presiding Officer
4. The Inspector of Police,
B2, Vishnukanchi Police Station,
Kancheepuram. ... 4th Respondent/
Referring party

Prayer Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 20.09.2021 and made in R.C.1781/2020/A1 on the file of Sub Divisional Magistrate and Revenue Divisional Officer, Kanchipuram.

For Petitioner : N.A.Nassir Hussain
For R1 : Mr.K.Thenrajan
For R2 : Mr.C.Samcar
For R3 & R4 : L.A.J.Selvam
Government Advocate (CrI.Side)



O R D E R

The present Revision is preferred by the Superintendent of Waqf Board, the second among the A party challenging an order passed under Section 145 Cr.P.C by the learned Executive Magistrate/RDO, Kanchipuram dated 20.09.2021.

2.The only grievance of the A party/revision petitioners is that the Superintendent of Waqf, who was arrayed as the second of the A party has not been heard before the RDO passed the impugned order.

3.The B parties to the proceedings are served and represented by Mr.K.Thenrajan.

4.Heard, Mr.N.A.Nassir Hussain, the learned counsel for the revision petitioners, Mr.K.Thenrajan, the learned counsel for the first respondent, Mr.C.Samcar, the learned counsel for the second respondent and Mr.L.A.J.Selvam, learned Government Advocate(Crl. Side) for the respondents 3 and 4 and perused the impugned order.

5.It is seen from the impugned order that the approach of the learned RDO cannot be faulted wherein he says that in an proceeding under Section 145 Cr.P.C, the Executive Magistrate has to prima facie satisfy himself as to who is presently in possession of the property in question, and not about the title. But, the grievance expressed here is not on merits but on procedure, in that, the Executive Magistrate has denied A party, more particularly the second of the A party a fair hearing. On going through the impugned order, this Court finds that there is no indication that the Execution Magistrate has heard any of the parties to the proceedings, though he appears to have appreciated certain documentary evidence made available before him.

6.This Court is not satisfied with the quality of hearing given by the learned Executive Magistrate and necessarily the parties deserve a better hearing before him. Hence, the order of the Executive Magistrate/RDO, Kanchipuram dated 20.09.2021 in RC.No.1781/2020/A1 is set aside and the matter is remanded back to the Executive Magistrate/RDO, Kanchipuram, who will now hear both sides and pass an order on merit, considering the case of all the parties.

7.This Criminal Revision Petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.



8.By consent of all the parties, the date of hearing before the learned Executive Magistrate/RDO, Kanchipuram is fixed on 28.02.2022.

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Sd/-
Deputy Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Tsg

To

1. Sub Divisional Magistrate and
Revenue Divisional Officer,
Kancheepuram.
2. The Executive Magistrate/RDO, Kanchipuram
3. The Inspector of Police,
B2, Vishnukanchi Police Station,
Kancheepuram.
4. The Public Prosecutor
Madras High Court
Chennai

+lcc to Mr.N.A.Nissr Ahmed, Advocate, S.R.No.9610
+lcc to Mr.K.Thenrajan, Advocate, S.R.No.9581

Cr1.R.C.No.961 of 2021

PP(CO)
CT 16/02/2022