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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL.RC.NO.401 OF 2017

AND

C.M.P.NO.3698 & 3699 OF 2017

- 1.S.Selvaraj
- 2.M.Jeevanand
- 3.S.Duraisamy

... Petitioners

Vs

1. A.Abdul Latheep
2. Kadhar Moideen
3. Shajahan
4. S.Mani
5. The Sub Divisional 1st Class Magistrate/
Revenue Divisional Officer,
Perambalur.
6. The Special Sub-Inspector of Police,
Perambalur Police Station,
Perambalur.
(Crime. No.115/2017)
(R5 and R6 are impleaded as per the order of this Court
dated 08.03.2018 made in Crl.M.P.No.3753 of 2018 in
Crl.R.C.No.401/2017)

... Respondents

Prayer:-

This Criminal Revision has been filed, under Sections 397 r/w 401 of Cr.PC, against the judgment dated 27.02.2017 passed in the Sub Divisional 1st Class Magistrate/Revenue Divisional Officer, Perambalur herein after referred to as 'Executive Magistrate' in Na.Ka.No.A3/1078/2017.



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For Petitioner
For R1 to R3

:Mr.C.S.Dhanasekaran
:No appearance

For R5 & R6

:Mr.S.Sugendran
Addl. Public Prosecutor

ORDER

This Criminal Revision is directed against notice issued by the 5th respondent under Section 145 of Cr.P.C directing the petitioner to appear before him on the ground that there is a likelihood of breach of peace in respect of a dispute with regard to 50 cents of land comprised in S.Nos.333/23A, 333/23B, 333/23C in Palakarai, Vadapuram village, Perambalur.

2. The petitioners are shown as 'B' party along with another person and the respondents one to three are shown as 'A' party.

3.Mr.C.S.Dhanasekaran, learned counsel appearing for the petitioners submitted that the impugned notice suffers from non application of mind in as much as in the body of the notice the petitioners are not shown as parties who are likely to cause breach of peace. The Notice mentions only about Mani, Velmurugan and Manivel as persons who are likely to cause breach of peace. Strangely, no notice has been issued to Velmurugan and Manivel. Therefore, the learned counsel submitted that there is total non application of mind in the issuance of notice under Section 145 Cr.P.C. He further submitted that at the time of admission of this revision, this Court by an interim order granted stay of all further proceedings pursuant to the impugned notice. And that thereafter, there were no complaints of breach of peace.

4.Notice has been served on respondents one to three ('A' party) and they are represented by a counsel as well. Today when the matter was taken up for hearing there was no representation on their side.

5.The learned Additional Public Prosecutor appearing for the fifth and sixth respondents instructions submitted that after the issuance of notice there were no complaints relating to any breach of peace.

6. This Court finds force in the submissions made by the learned counsel for the petitioners that the impugned notice suffers from a total non application of mind in as much as the petitioner is not shown as a person who is likely to cause breach of peace in the notice and yet he has been served with



the notice. That apart no notice has been issued to two other persons whose name is found in the notice as persons who are likely to cause breach of peace. The notice is contrary to the provisions of Section 145(1) Cr.P.C reads as follows:

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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.

It is clear from the above provision that the Executive Magistrate can only call upon the 'parties concerned to attend his Court'. The impugned notice is therefore liable to be set aside on this ground alone.

7. Further, this Court finds that there is no breach of peace after the issuance of notice and no useful purpose would be served in reviving the action under Section 145 Cr.P.C, five years after the issuance of notice.

8. For the above reasons, the impugned notice is quashed. However, it is open to the fifth respondent to take any action in accordance with law, if need arises.

9. The Criminal Revision stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsn



To:

1. The Sub Divisional 1st Class Magistrate/
Revenue Divisional Officer,
Perambalur.
2. The Special Sub-Inspector of Police,
Perambalur Police Station,
Perambalur.
3. The Public Prosecutor, High Court, Madras

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.35782

Crl.RC.No.401 of 2017
and C.M.P.Nos.3698 & 3699 of 2017

RK (CO)
PM/30/06/2022