



*CrI.O.P.(MD)No.15196 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **30.08.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

**CrI.O.P.(MD) No.15196 of 2023**

**and**

**CrI.M.P(MD)Nos.12046 and 12047 of 2023**

Mohammad Jafar Khan Pani

... Petitioner/A Party

Vs.

1.The Sub Divisional Magistrate and  
Sub Collector,  
Cheranmahadevi,  
Tirunelveli.

2.The Inspector of Police,  
Thisaiyanvilai Police Station,  
Tirunelveli District.

...Respondents/Complainants

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings of the first respondent in A1/M.C.No.56/2023 (145 Cr.P.C) dated 28.07.2023 and to quash the same in respect of the petitioner alone.

For Petitioner : Mr.K.Sudalaiyandi

For Respondents : Mr.E.Antony Sahaya Prabahar  
Additional Public Prosecutor



**ORDER**

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This Criminal Original Petition is filed challenging the summon issued by the first respondent/Sub Divisional Magistrate and Sub Collector, dated 28.07.2023 in proceedings of A1/M.C.No.56/2023 (145 Cr.P.C) asking the petitioner to appear before him on 31.07.2023 at about 3.00 p.m., under 145 Cr.P.C.

2. It is submitted by the learned counsel for the petitioner that the land to the extent of 1047 Acres in survey no.791 to 894 at Urumankulam Village, Thisayanvilai Taluk, Tirunelveli District, belongs to one Khanumiah Pallivasal @ Shah Ali Nuktha Mosque at Pettaikulam. O.S.No.299 of 2011 filed by the mosque was decreed by the Subordinate Court, Tirunelveli, and the District Collector, Tirunelveli and Tahsildar, Thisaiyanvilai, have preferred C.R.P(MD) No.2161 of 2018 on the file of the Madurai Bench of Madras High Court and the same is still pending.

3. It is submitted that the respondent No.1 /Sub Divisional Magistrate and Sub Collector has issued a impugned notice under Section 145 of Cr.P.C., and directed both the A and B parties to appear before the Executive Magistrate in individual capacity, however, the



petitioner has been acting as Mukthavalli of the said Mosque. It is also submitted further that since the Civil Court had passed the decree in favour of the Mosque, notice issued under Section 145 of Cr.P.C., is not maintainable.

4. The learned Additional Public Prosecutor submitted that in the said land to the extent of 1047 Acres, part of the lands were assigned to landless persons. The petitioner has entered into the land and cleaned both parts of the lands. Accordingly, the beneficiaries, to whom, the part of the land was assigned, have raised objection and since there was law and order problem, the respondent No.1/ Sub Divisional Magistrate and Sub Collector has issued notice under Section 145 of Cr.P.C.

**Section 145 of Cr.P.C., runs as under:**

*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.*



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*(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.*

*(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,*

*(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).*

*(5) Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.*

*(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub- section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he*



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*proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed.*

*(b)The order made under this sub- section shall be served and published in the manner laid down in sub-section (3).*

*(7)When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.*

*(8)If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of. such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.*

*(9)The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.*

*(10)Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.*

5. The Executive Magistrate is of the opinion that the law and order situation and breach of peace of society may likely to be affected and the learned Executive Magistrate is empowered to issue the notice under Section 145 of Cr.P.C., to both parties and elaborate procedure has been mentioned in Section 145 Cr.P.C., herein.



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6. However, in the case on hand, the Subordinate Court, Tirunelveli, has already decided the case against the Government and in favour of the Mosque and aggrieved by the same, the District Collector, Tirunelveli and Tahsildar, Thisaiyanvilai have preferred an appeal in C.R.P(MD) No.2161 of 2018 and the same is pending. Therefore, when the matter was already decided by the Civil Court, still the C.R.P(MD) No.2161 of 2018 is stated to be pending, at this stage, there is no question as to whether the Tahsildar/Executive Magistrate can issue any proceedings.

7. The learned counsel for the petitioner has cited the judgment of the Hon'ble Supreme Court reported in **(1985) 1 SCC 427 (Ram Sumer Puri Mahant Vs. State of U.P. And Others)** which reads as follows;

*“2. Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under Section 145, Code of Criminal Procedure ('Code' for short), and attachment of the property at the instance of respondents 2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No.87 of 1975 filed in the Court of Civil Judge at*



*Ballia wherein the question of title was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2-5 were the plaintiffs and we gather from the counter affidavit filed in this Court that an appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate court. The assertion made in the Petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter affidavit. 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. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for*



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*adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.”*

8. In view of the above, since the matter in respect of the dispute between the petitioner and other persons has already been seized by the Civil Court, the first respondent/the Sub Divisional Magistrate and Sub Collector, cannot issue any proceedings under Section 145 of Cr.P.C.

9. In view of the above, since the petitioner has made out a case seeking quashment of the summon issued to the petitioner under Section 145 of Cr.P.C, the impugned proceedings in A1/M.C.No.56/2023 (145 Cr.P.C) issued by the first respondent/Sub Divisional Magistrate and Sub



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Collector, dated 28.07.2023 is liable to be set aside. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

**30.08.2023**

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Sub Divisional Magistrate and  
Sub Collector,  
Cheranmahadevi,  
Tirunelveli.
- 2.The Inspector of Police,  
Thisaiyanvilai Police Station,  
Tirunelveli District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**DR.D.NAGARJUN. J.**

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