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Crl.O.P No.28451 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.28451 of 2023
and Crl.MP.No.19776 of 2023

K.Rathinasamy

...“A” Party/ Petitioner

.VS.

1.The Sub-Divisional Magistrate
Karaikal.

..Respondent

2.Station House Officer
Thirunallar Police Station
Thirunallar.

..Complainant/Respondent

3.Mrs.Pushpavally

.. “B” Party/ Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in M.C.No.112 of 2023, on the file of the Sub-Divisional Magistrate at Karaikal and quash the same.

For Petitioner : Mr.R.Thenamirtha Shyamala

For Respondents : Mr.Mohandass
Public Prosecutor (Pondicherry)



Crl.O.P No.28451 of 2023

ORDER

This criminal original petition was filed challenging the summons issued by the 1st respondent dated 24.10.2023, wherein an enquiry was called for under Section 145 Cr.PC.

2.Heard Mr.R.Thenamirtha Shyamala, learned counsel for the petitioner and Mr.Mohandass, learned Public Prosecutor (Pondicherry) for respondent police.

3.The summons that was issued by the 1st respondent was challenged mainly on the ground that it is not in compliance with Section 145(1) Cr.PC.

4.Whenever an Executive Magistrate is satisfied from a report of a police officer that a dispute is likely to cause breach of peace touching upon land or water or the boundaries thereof, he should first make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend for the enquiry. The prerequisite for issuing the notice/summons is to pass a preliminary order in line with Section 145(1) Cr.PC. This has not been complied with by the 1st respondent and the summons that was issued does not contain any grounds upon which the 1st respondent was satisfied to pass preliminary order pursuant to which the summons was issued to the parties. In view of the same, the impugned summons issued by the 1st respondent is hereby quashed.

5.If according to the 1st respondent, the information that was provided by



CrI.O.P No.28451 of 2023

the police officer by way of a report, is likely to cause breach of peace, the 1st respondent has to pass preliminary order and thereafter, proceed further in accordance with Section 145 Cr.PC.

6.This criminal original petition is allowed with the above directions.
Consequently, connected miscellaneous petition is closed.

03.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

- 1.The Sub-Divisional Magistrate
Karaikal.
- 2.Station House Officer
Thirunallar Police Station
Thirunallar.
3. Sub-Divisional Magistrate
Karaikal.
- 4.The Public Prosecutor,
Puducherry.

N. ANAND VENKATESH., J

KP



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