



Crl.R.C.No.964 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.964 of 2023

and

Crl.M.P.No.7816 of 2023

T.Durairaj

... Petitioner

Vs

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Erode District.

2. The Inspector of Police,
Kodumudi Police Station,
Erode District.

3. Vadivel

4. Nirmala Devi

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C., to set aside the order dated 31.03.2023 made in Na.Ka.No.4425/2022/A2 on the file of the Sub Divisional Magistrate cum Revenue Divisional Officer, Erode District and consequently direct the respondents to remove the wired fence and restore the pathway to its original position as on date of the impugned order dated 31.03.2023.



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For Petitioner : Mrs.R.Shase
for M/s.M.Gururprasad

For R1 & R2 : Mr.S.Sugendran
Additional Public Prosecutor

For R3 & R4 : Mr.N.Palanikumar

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 31.03.2023 passed in Na.Ka.No.4425/2022/A2 on the file of the first respondent and consequently direct the respondents to remove the wired fence and to restore the pathway to its original position as on the date of the impugned order dated 31.03.2023.

2. Heard the learned counsel appearing on behalf of the petitioner, the learned counsel appearing for the private respondents and the learned Additional Public Prosecutor appearing for the official respondents.



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3. Learned counsel appearing on behalf of the petitioner submitted as follows:

A civil suit is pending between the parties regarding pathway, the second respondent-Police filed a petition before the first respondent herein to initiate proceedings under Section 145 of the Cr.P.C., But the first respondent, without considering the facts and circumstances of the case and the actual possession of the property, passed the impugned order. When the suit is pending before the civil court, the first respondent has no power to entertain the proceedings under Section 145 of the Cr.P.C., Though the first respondent has referred to the pendency of civil suit between the parties, however passed the impugned order, which is against law and the same is liable to be set aside.

4. Per contra, the learned counsel for the private respondents submitted that the said civil suit is nothing to do with the order passed by the first respondent and hence the revision is liable to be dismissed.



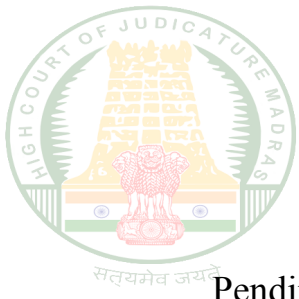
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5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record more particularly the impugned order.

6. As could be seen from the materials available, two suits are pending before the competent civil court namely (i) O.S.No.71 of 2021 filed by the petitioner against the third respondent and two others and (ii) O.S.No.33 of 2022 filed by one Mr.Muthusamy and five others against the petitioner, the third respondent and four others before the District Munsif-cum-Judicial Magistrate Court, Kodumudi.

7. Admittedly, the petitioner has already approached the competent civil court for reliefs. Pending the civil suit, the second respondent approached the first respondent. Further, while passing the impugned order, the first respondent, referred to the pending suit between the parties. Once the parties approached the competent civil court with regard to their civil dispute, the first respondent has no authority to entertain the proceedings under Section 145 of the Cr.P.C..



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Pending the civil suit, the impugned order dated 31.03.2023 passed by the first respondent is out of jurisdiction.

8. In view of the above, the impugned order dated 31.03.2023 passed by the first respondent is set aside. However, the parties are at liberty to work out their remedy before the competent civil court in the pending civil suit.

9. With the abovesaid direction, this Criminal Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

21.03.2025

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Erode District.
2. The Inspector of Police,
Kodumudi Police Station,
Erode District.
3. The Public Prosecutor,
High Court, Chennai.



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P.VELMURUGAN, J.

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