

**Malkappa Vs. Padmanna**

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**Court :** Karnataka

**Decided On :** Aug-26-1958

**Reported in :** AIR1959Kant122; AIR1959Mys122; 1959CriLJ621; ILR1958KAR1; (1958)36MysLJ800

**Judge :** A. Narayana Pai, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107 and 145

**Appeal No. :** Criminal Revn. Petn. No. 268 of 1958

**Appellant :** Malkappa

**Respondent :** Padmanna

**Advocate for Def. :** S.R. Kagalkar, Adv.

**Advocate for Pet/Ap. :** Appa Rao, Adv.

**Judgement :**

ORDER

**A. Narayana Pai, J.**

1. The only point for consideration in this Criminal Revision Petition is whether a criminal court should proceed under Section 145 of the Code of Criminal Procedure in respect of immovable property which is the subject matter of Civil

litigation actually pending in a Civil Court.

2. There is no dispute regarding the principal facts in this case. The respondent before me has already filed a suit against the petitioner in which he obtained a temporary injunction on 11-12-1956, which was made absolute on 16-9-1957, Upon appeal by the petitioner against that order, the District Court appears to have passed an order of stay suspending the operation of the trial Court's order dated 16-9-1957 till the disposal of the appeal before the District Court.

This stay order was passed on 14-10-1957. On 6-11-57 the police made a report before the Munsiff Magistrate of Gulbarga stating that the parties are contending among themselves on the question of possession of the very property which is the subject-matter of the above civil litigation and on the strength of this report the Magistrate made a preliminary order on 27-11-1957 and a final order on 11-3-1958 declaring the first party, that is the respondent before me, to be the party in actual possession on the date of the preliminary order. The petitioner then took the matter in revision before the District Magistrate of Gulbarga, who has confirmed the order of the Munsiff-Magistrate.

3. The petitioner has now approached this court with this revision petition. The petition seeks to revise the order of the trial Magistrate himself and is not directed against the order of the District Magistrate confirming that of the trial Magistrate. On this basis the respondent has contended that the revision petition is out of time and there is no case before me for consideration. Normally, apart from the question of limitation, I would not have interfered in a case like this where the finding after all is one of fact which cannot be said to be unsupported by evidence on record.

4. It is, however, necessary to interfere in this case because in my opinion the provisions of Section 145 of the Code of Criminal Procedure should not be invoked when civil litigation about the identical subject-matter is actually pending. It should be remembered that the very purpose of that section is to prevent the breach of public peace at the instance of parties, who should, like law abiding citizens, place their dispute before a civil court and not take the law into their own hands.

Even the final order that is contemplated under that section is intended only as a stop-gap arrangement. The ultimate objective undoubtedly is to compel parties to place their disputes before a Civil Court and to get a proper adjudication on their rights to immovable property. When the parties have already gone to the civil court and the civil court is already seized of the matter, it seems to me that there is no longer any scope for invoking Section 145.

The Overriding considerations of the maintenance of public peace have very often been pressed before courts whenever a situation like this has arisen. Some courts have taken the view that although it may not be proper for a Magistrate to act under Section 145 of the Code of Criminal Procedure, the mere pendency of Civil litigation does not oust the jurisdiction of a Magistrate to proceed under Section 145.

It seems to me that it is a misapprehension to consider this question from the point of view of the existence or otherwise of a jurisdiction in a Magistrate. Section 145 should not be understood as merely conferring a particular jurisdiction on a criminal court to deal with a civil matter. It embodies or enjoins upon the Magistrate a certain duty and that duty is to see that parties who have a civil dispute do not take the law into their own hands and commit breach of peace.

The duty is to see that the parties actually go to a civil court and not fight about the land. If the parties have already gone there, the Magistrate has no longer any duty to perform. It is also necessary to state that one of the pillars of public peace is the respect for orders of the Civil Courts and the proceedings before a Civil Court.

If the criminal courts should start parallel proceedings in respect of a matter which is pending before a Civil Court, I have no doubt that it will have the effect of undermining respect for the authority of civil courts with the result that the very objective of Section 145 will be defeated. This is not saying that the Magistrate cannot proceed under Section 107 to bind over parties who, it is apprehended, might commit some offence or commit breach of the peace.

Indeed that section is more proper because it is exclusively a matter for a Magistrate to deal with, whereas Section 145 impinges upon the authority of civil

courts. When therefore, there is a choice between Section 145 and Section 107 before a Magistrate by reason of the pendency of civil litigation, it seems to me perfectly obvious that he must choose Section 107 and not Section 145.

5. I have, therefore, no hesitation in setting aside the order of the trial Magistrate as well as that of the District Magistrate, who has confirmed the first order. If the maintenance of public peace requires the Magistrate to take action, it is perfectly open to him to invoke the provisions of Section 107 of the Code of Criminal Procedure.

6. The Revision Petition is, therefore, allowed and the orders of the courts below set aside.

7. Revision allowed.

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