

A. Baskara Narayanan Vs. So. Murugesan

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SooperKanoon Citation : sooperkanoon.com/831838

Court : Chennai

Decided On : Oct-22-2003

Reported in : 2003(4)CTC466

Judge : A. Packiaraj, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145(1)

Appeal No. : Crl. R.C. No. 1404 of 2001

Appellant : A. Baskara Narayanan

Respondent : So. Murugesan

Advocate for Pet/Ap. : N. Mohideen Basha, Adv.

Disposition : Revision allowed

Judgement :

ORDER

A. Packiaraj, J.

1. This revision has been filed against the final order passed by the Sub-Divisional Executive Magistrate cum Revenue Divisional Officer, Tirunelveli in A5/M.C.No.1/2001, stating that the petitioner has no right whatsoever to put up a culvert and a road in S.No. 440/3 and 440/4 and use the same as his pathway.

2. On a perusal of the order impugned, I am of the view that it deserves to be necessarily set aside on a short point of law and hence, it may be not necessary to go into the details of the order. Suffice to state that on going through the entire records as well as the file, there appears to be no preliminary order at all passed under Section 145(1), Cr.P.C. In fact, a notice has been served on 20.2.2001, asking the petitioner to appear for the enquiry initiated under Section 145(1), Cr.P.C. The basic requirement to initiate such a proceeding is that there must be some information in relation to the presence of breach of peace, which information should be made known to the petitioner, or the counter petitioner as the case may be and it is only thereafter, upon the Magistrate subjectively satisfying about the presence of breach of peace, shall initiate proceedings.

3. In the present case on going through the notice. I do not see either of them, but surprisingly, the learned Magistrate has conducted an enquiry and passed the impugned order. Here it would be pertinent to refer to the decision rendered by this Court in *Kailasa Thevar and Anr. v. Ramiah and 42 Ors.* 1994 (1) L.W. (Crl.) 201 wherein His Lordship Arunachalam, J. has held there must be a preliminary order under Section 145(1), Cr.P.C and that order must clearly state the reasons and grounds on which the satisfaction was based to show that the Magistrate had applied his mind in passing the preliminary order.

4. Yet another ground, which ascribes to the quashing of the impugned order is the fact that without there being a preliminary order, final order cannot be passed. This proposition of law has been reiterated in the decision reported in *R. Thiagarajan v. K. Angamuthu* 1996 (2) L.W (Crl.) 615, wherein His Lordship Mr. Justice M. Karpagavinayagam has held that the enquiry under Section 145 of the Code of Criminal Procedure should be initiated only when the mandatory provisions of Section 145(1) of the Code of Criminal Procedure has been complied with by passing a preliminary order, giving out all the necessary details and reflecting the grounds of satisfaction arrived at by the Magistrate, otherwise the entire proceedings would be illegal.

5. Therefore, in view of the reasons stated above, I feel that the impugned order is liable to be set aside and is accordingly set aside.

In the result the revision is allowed.

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