

S. Jayaraj Vs. Tahsildar

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Court : Chennai

Decided On : Oct-27-2003

Reported in : 2003(4)CTC712

Judge : N. Dhinakar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 133, 136, 138 and 141; Indian Penal Code (IPC) - Sections 188

Appeal No. : Crl.O.P. No. 12616 of 2002 and Crl.M.P. No. 4954 of 2002

Appellant : S. Jayaraj

Respondent : Tahsildar

Advocate for Def. : M.K. Subramanian, Government Adv. (Crl.Side)

Advocate for Pet/Ap. : A. Muthukumar, Adv.

Judgement :

ORDER

N. Dhinakar, J.

1. This is a petition to quash an order purported to have been passed under Section 141, Cr.P.C. by the Tahsildar, Mayiladuthurai, on 24.5.2002.

2. It is submitted that the proceedings were initiated against the petitioner under Section 133(1), Cr.P.C. and later, an order was passed on 7.6.2000 by the Revenue Divisional Officer asking him to remove the nuisance. Thereafter, the Tahsildar sent the order impugned in this Crl.O.P. asking him to carry out the order passed by the Revenue Divisional Officer or otherwise, he will be prosecuted for an offence punishable under Section 188, I.P.C.

3. The learned counsel appearing for the petitioner submits that an order under Section 141, Cr.P.C. can only be passed by a Sub Divisional Magistrate or any other Executive Magistrate and not by a Tahsildar and therefore, the order dated 24.5.2002 purported to have been passed by the Tahsildar, Mayiladuthurai, under Section 141, Cr.P.C. is bad in law.

4. I have perused the order and I find every force in the contention of the petitioner. The order dated 24.5.2002 purported to be one under Section 141, Cr.P.C. is signed and sent by the Tahsildar, Mayiladuthurai. He has no jurisdiction to pass an order under Section 141, Cr.P.C., since, under Section 141, Cr.P.C., it is contemplated that when an order has been made absolute under Section 136 or Section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by Section 188 of the Indian Penal Code. Admittedly, the Tahsildar is not a Magistrate and it was not he, who is empowered to pass an order under Section 141, Cr.P.C. Therefore, the order passed by the Tahsildar, Mayiladuthurai, in Na.Ka.5752/02 dated 24.5.2002 is quashed and the petition is allowed. Consequently, Crl.M.P.No. 4954 of 2002 is closed.