

Ganesan, and ors. Vs. the Revenue Dvisional Officer Cum - Sub Divisionsal Magistrate, and ors.

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Court : Chennai

Decided On : Jun-14-2010

Judge : T.Sudanthiram, J.

Acts : [Code Of Criminal Procedure \(CRPC\), 1973](#) - Sections 397, 401

Appeal No. : Crl.R.C.No.400 of 2010 and M.P.No.1 and 2 of 2010

Appellant : Ganesan, and ors.

Respondent : The Revenue Dvisional Officer Cum - Sub Divisionsal Magistrate, and ors.

Advocate for Def. : Mr.N.Umapathi; Mr.V.R.Balasubramanian, Advs.

Advocate for Pet/Ap. : Mr.T.Murugamanikkam, Adv.

Judgement :

1. The revision petitioners herein are the B-parties and the respondents 3 to 9 are the A-parties in M.C.No.18 of 2010, before the Revenue Divisional Officer-cum-Sub Divisional Magistrate, Thiruchengode. The Inspector of Police, Jaderpalayam, Thiruchengode Taluk submitted a report before the Executive Magistrate regarding the dispute between the A-parties and B-parties with regard to the existence of the situation likely to cause a breach of peace due to the dispute regarding possession of the properties.

2. The learned Executive Magistrate also sent notice to both parties directing them to appear before him on 01.03.2010. On 01.03.2010 both the parties have appeared and written submissions were filed only by A-party and they were again directed to appear on 15.03.2010. On 15.03.2010, the Executive Magistrate passed an order prohibiting both parties from using the properties and directing both parties to maintain status quo.

3. Aggrieved by the order passed by the learned Executive Magistrate on 15.03.2010, B-party has preferred this criminal revision before this Court.

4. Mr.T.Murugamanikkam, learned counsel appearing for the petitioners/B-party submitted that the learned Executive Magistrate has passed an order preventing the B-party from entering into the property and without any enquiry, he had erred in passing an order of 'status quo' like a civil court. The learned counsel further submitted that though the Executive Magistrate earlier issued notice to the B-party, that notice itself was not a valid one and it is not according to the requirements under Section 145(1) Cr.P.C and further before passing the final order, the learned Executive Magistrate has no power to pass an interim order of status quo and thereby causing disturbance to the possession of the B-party. Learned counsel further submitted that A-party purchased un-divided 5/12 and 10/24 shares from one branch of the petitioners' family by sale deed dated 23.10.2009 and he also filed a suit for partition. But the civil Court has not passed any interim order. Therefore, A-party has no right to claim for possession till the partition suit is allowed.

5. The learned counsel for the petitioner relied on the decision of this Honourable Court reported in 1992 LW (Cri.) 579 (G.Sethurman and two others vs. Miss.Meenakshi Ammal and two others) and 2004 (1) LW 287 (Bhaskara Narayanan vs. So.Murugesan).

6. Mr.N.Umapathy, learned counsel appearing for the respondents 3 to 9 submitted that only after the Executive Magistrate issuing notice to both parties, they have appeared. A-party has already filed a written statement and thereafter only on 15.03.2010, the learned Magistrate passed the order.

7. The learned counsel appearing for the respondents 3 to 9, further submitted that this being only interim order passed by the learned Executive Magistrate, the revision against those orders is not maintainable. He also relied on the decision of the Honourable Allahabad High Court rendered in Crl.R.C.No.703 of 2001 (Maan Babu Dubey vs. State of Uttar Pradesh and another). (uncertified copy computer print is produced by the counsel).

8. The learned Additional Public Prosecutor appearing for the first and second respondent submitted that as there was a dispute between both parties, the Inspector of Police, Jedarpalayam Police Station, Thiruchengode Taluk has initiated action. The learned Public Prosecutor also submitted that after an order being passed under Section 145(1) Cr.P.C., the learned Executive Magistrate has got power only to attach the disputed property and appoint a receiver as per Section 146 Cr.P.C.

9. This Court considered the submission made by both parties and perused the records.

10. In the impugned order, the Executive Magistrate has not mentioned under what provision he passed the order. Only in the reference, it is stated that "Jadarpalayam Police Station FIR No.83 of 2009 dated 09.02.2010 under Section 145 Cr.P.C." This particular order was passed under what provision of Cr.P.C is not specifically stated. A reading of the order shows that pending enquiry, the learned Executive Magistrate has passed an order of 'status quo'. As per Section 145 Cr.P.C, no such interim order could be passed by the learned Executive Magistrate. Under Section 145(8) Cr.P.C., the Executive Magistrate can pass an interim order for disposal of the property, if it is subject to speedy and natural justice. Under Section 146(1) Cr.P.C., only if the Executive Magistrate decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was in possession of the disputed property, then in such possession of the subject of dispute, he may attach the subject of dispute and appoint a receiver.

11. Further learned Executive Magistrate has not given any reason in his order for passing such order. The order dated 15.03.2010 cannot be taken as final order

under Section 145 Cr.P.C., since as per Section 145(4) Cr.P.C., before passing any final order, the Executive Magistrate must receive evidence from both the parties. Admittedly in this case, no evidence has been let in.

12. Apart from this, the learned Executive Magistrate while issuing notice to both parties dated 15.02.2010, directing both parties to appear on 01.03.2010, he has not made out the grounds for his satisfaction that there was a dispute and the dispute was likely to cause breach of peace.

13. It also appears that already a suit also has been filed by A-party before the Civil Court and it is pending and no interim order has been passed so far.

14. It is observed by this Honourable court in the decision reported in 1992 LW (Cri.) 579 (G.Sethuraman and two others vs. Miss.Meenakshi Ammal and two others) as follows: "5. Even at the outset I may point out that in the facts and circumstances of the case, I have no option except to affix my seal of approval on the points urged by learned counsel for the petitioners. The jurisdiction conferred upon the Executive Magistrate under S.145 (1) Cr.P.C is an exceptional one and the provisions of the section will have to be strictly followed, while taking action under it. The object of the section is not to permit parties to bring their civil disputes before a criminal court or to manouvre for possession for the sake of subsequent civil litigation, but to clothe the Magistrate concerned with the power to maintain peace within his local area. Therefore, a duty is cast on the Magistrate to guard against abuse of provisions by persons using it with the object of getting possession of the property, while attempting to drive the other party to a civil court. The very jurisdiction of the Magistrate to proceed under this section arises out of his satisfaction of a dispute likely to cause breach of peace, either on a report of a police officer or upon other information, which satisfaction must be reflected in the order which he should make in writing, stating the grounds therefore. This order, which is the sine qua non of the proceeding initiated under Section 145 Cr.P.C must require the parties concerned in such disputes to attend his Court in person or through Pleader on a specified date and time and put in written statement of their respective claims as respects the factual or actual possession of the property of dispute. After passing of a preliminary order, a copy of the order shall be served

in the manner provided for service of summons by the Code of Criminal Procedure upon such person or persons as may be directed by the said Magistrate and at least one copy should be affixed at some conspicuous place at or near the subject of dispute. This service of the copy of the order is provided under S.145(1) and (3) together. It is apparent that a service of summons is not enough and the preliminary order itself shall have to be served in the same pattern as service of summons.

6. This Court, on more than one occasion, had held that under S.145(1) Cr.P.C., the Magistrate having jurisdiction shall make an order in writing that he was satisfied either from a police report or other information that a dispute likely to cause breach of peace existed, and the grounds of his satisfaction should be clearly stated to indicate application of mind by the Magistrate in passing the preliminary order. This provision of making an order in writing, after initial satisfaction and stating the grounds of his satisfaction, has been held to be mandatory.

7. In the instant case, the sordid fact is that no preliminary order had been passed at all and what all had been done is the despatch of subpoena to the parties concerned immediately on receipt of the police report, requiring them to appear before the Magistrate and place material evidence in projection of their claims, which is indicative of the fact that the Executive Magistrate had not at all applied his mind in deriving the subjective satisfaction, which he was expected to have before he proceeds further in the matter.

8. Sub-section (4) of Section 145 Cr.P.C enables both parties to adduce oral and documentary evidence and the Magistrate is bound not only to receive all such evidence as may be produced but he is also empowered to take such further evidence, if any, as may think necessary. After the production of the oral evidence the Magistrate will have to decide the actual or factual possession the evidence placed before him, on the date when the preliminary order had been passed, which necessarily implies the discussion of the evidence placed before him."

15. It is held by this Honourable Court in 2004-1 L.W.(Cri.) 287 (Bhaskara Narayanan vs. So.Murugesan) as follows:

"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 another vs. Ramiah and 42 others (1994-1-L.W.(Cri.) 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.(Cri.)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."

16. A perusal of the impugned order does not at all indicate with reference to any oral or documentary evidence in deciding the question of possession. Further, the preliminary order passed by the learned Magistrate shows that the Magistrate has not at all applied his mind in deriving the subjective satisfaction regarding the existence of breach of peace.

17. In view of the ratio laid down by this Honourable High Court, the orders passed by the learned Magistrate in M.C.No.18 of 2010 dated 15.02.2010 and 15.03.2010 are not sustainable and therefore set aside. The proceedings are remitted to the file of the Executive Magistrate for fresh disposal in accordance with law from the stage of 145(1) Cr.P.C.

18. Though it was contended by the learned counsel for the respondents 3 to 9 - A-party, the decision of the Honourable Allahabad High Court rendered in Crl.R.C.No.703 of 2001 dated 29.04.2010, wherein it is observed that when a

preliminary order is passed under Section 145 and 146 Cr.P.C., no revision against the said order is maintainable, I am of the considered view that the order passed by the Executive Magistrate under Section 145 Cr.P.C being illegal and affecting the rights of the parties, the revision is maintainable. Even if it is to be held that the revision is not maintainable, nothing prevents this Court from exercising the jurisdiction under Section 482 Cr.P.C to quash the said illegal orders.

19. Accordingly the criminal revision petition is allowed. Consequently, M.P.Nos.1 and 2 of 2010 are closed.

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