

**(1984) 02 MAD CK 0023**  
**In the Madras High Court**  
**Case No : Criminal M.P. No. 5125 of 1983**

A. Nesamony

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

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**Date of Decision :** 20-02-1984

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation :** (1984) LW(Cri) 107

**Hon'ble Judges :** Maheswaran, J

**Bench :** Single Bench

**Advocate :** R. Antony Xarier, for the Appellant; N. Dinakaran, Government Advocate II (Criminal Side), for the Respondent

**Final Decision :** Allowed

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## Judgement

Maheswaran, J.—This application u/s 482 of the Code of Criminal Procedure, is to set aside the order passed by the Tahsildar Executive Magistrate, Vilavancode taluk, Kanayakumari district ,dated 1st July, 1983. The Petitioner claims to be the owner of the property comprised in Old Survey No. 468 which is re-numbered as Re-Survey No. 480/4 in Kunnathur Village, Vilavancode taluk in Kanyakumari district. The Petitioner claims to have purchased five cents of land in the said Survey field for valuable consideration under three sale deeds. (The affidavit in support of the application does not disclose from whom it was purchased). According to the Petitioner, he has become the owner of the land. But, on 24th June, 1983 he has been served with a notice u/s 133 of the Code of Criminal Procedure, by the Tahsildar Executive Magistrate, requiring him to remove the obstruction, namely a compound wall, and also requiring him to show cause why the order should not be enforced. In answer to this notice the Petitioner, appearing in person on 30th June, 1983, presented his reply, but he was served with another order which reads that the order requiring him to remove the obstruction is made absolute. Thereafter, the construction made by him has been demolished by the first Respondent. According to the Petitioner the order passed

is illegal, void and unenforceable.

2. It is clear from the records in this case that the order of the Magistrate is unsustainable. When a Magistrate proceeds u/s 133 of the Code of Criminal Procedure, he has to issue a conditional order u/s 133(1). The order has to be served on the party and if, in obedience to the notice issued, the party appears before the Magistrate, the Magistrate has to ascertain from him whether he denies the existence of a public right, u/s 137 of the Code. In the event of his denial, the Magistrate has to enquire into the matter and give a finding. The Petitioner has filed a reply statement, wherein he has categorically denied that the property is being used as a market by the public market over the land and that as owner of the land, he is entitled to put up a compound wall for any property. But, most unfortunately the Tahsildar Executive Magistrate instead of making an enquiry or giving a finding, has passed an order making the earlier order absolute, and to crown it all, has demolished the compound wall put up by the Petitioner. This is in flagrant violation of the procedure enjoined upon the Magistrate under Sections 133, 137 and 138 of the Code of Criminal Procedure. Though the Petitioner has averred in the petition that such demolition is having some political overtones, I am not probing into the reason for such a hasty order made by the Tahsildar Magistrate. The order which is illegal cannot be sustained and has to be set aside and is hereby set aside. This petition is accordingly allowed.