

(1978) 04 KAR CK 0005
In the Karnataka High Court
Case No : CrIRP. 144 of 1978

Chaluve Gowda G. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145(1)

Citation : (1978) 2 KarLJ 246

Hon'ble Judges : Kudoor, J

Judgement

1. The revision petitioners in this revision petition were members of the second party in the proceedings case No. C. Mis. 5/77-78 on the file of the Sub-Divl Magistrate, Tumkur Sub-Divn, Tumkur. They have challenged the correctness of the order dated 5-11-1977 made in the above proceedings by the Sub Divisional Magistrate, Tumkur, issuing a preliminary Order against the members of the first and second party, exercising his jurisdiction under S. 145(1) Cr. PC. 1973, shortly called "the Code", directing both the parties to appear before him end to put in such documents or to adduce evidence of such persons in support of their respective claim regarding the possession of certain land measuring 54 acres situated in Channapura village, Kunigal Taluk and also appointing the Tahsildar, Kunigal Taluk to be the receiver of the disputed property.

2. It appears that the learned Sub Divisional Magistrate took action in the matter on the report of the Sub Inspector of Police, Kunigal that a dispute likely to cause breach of the peace existed in respect of the suit schedule properties between the members of the first and second party as to the possession of those lands. Sri P.R. Srinivasan, the learned Counsel appearing for the revision petitioner"s advanced two fold contentions attacking the validity of the impugned order. His first contention is that the impugned order is one made without jurisdiction, as the learned Sub Divisional Magistrate has not complied with the mandatory provisions of S. 145(1) of the Code. S. 145(1) of the Code reads thus:

"Whenever an Executive Magistrate is satisfied from a report of a police officer or

upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written-statements of their respective claims as respects the fact of actual possession of the subject of dispute".

A plain reading of the provisions of S. 145(1) of the Code would reveal that two conditions are required to be satisfied to make an order under S. 145(1) legal and valid. The first part of the provision stipulates that the Executive Magistrate who proposes to take action under S. 145(1), must be satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof within his local jurisdiction. The second part stipulates that in such a case, he shall make an Order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court etc., as provided in the latter part of the said sub-section. Thus, it is clear from the above provision that not only that the Magistrate should be satisfied from a report of a police officer or such other information that a dispute likely to cause a breach of the peace exists concerning certain lands etc., situated within his local jurisdiction, but also he should make an order in writing stating the grounds of his being so satisfied. If an order is made under S. 145(1) of the Code without complying with either of these two conditions, then such an order is invalid in law. That it is so, has been enunciated by this Court in *Puttaniah v. Bhadrappa*, (1967) 1 MysLJ. 212. The relevant observation at page 213 of the decision runs thus:

"What is required by sub-sec. (1) of S. 145 Cr. PC., is in the first instance, that the Magistrate must be satisfied from the police report that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof within the local limits of his jurisdiction; and secondly he must state the ground of his being so satisfied. It is only then that he is entitled to make the order." One more decision of this Court, which is relevant to be referred is the decision in *Bisse Gowda v. State of Mysore*, (1968) 2 MysLJ. 521. The ratio of the decision is aptly summarised in the headnote as follows:

"In the absence of the Magistrate placing on record the grounds on which he was satisfied that there was a likelihood of the breach of the peace, the Magistrate would have no jurisdiction to make a preliminary order.....".

3. In the light of the above legal position, let me now consider the impugned order. As rightly pointed out by Sri. P.R. Srinivasan, the learned Counsel for the petitioner the impugned order has complied with the first part of sub-sec. (1) of Section 145 of the Code, namely that the Sub Divisional Magistrate was satisfied from the report of the Sub-Inspector of Police. Kunigal that a dispute likely to cause a breach of the peace existed in respect of the schedule properties which

were situated within the local limits of his jurisdiction. However, that order is silent about the grounds on which he was being so satisfied. A mere statement in the impugned order that the Magistrate was satisfied from the police report about the existence of a dispute over the properties which would cause a breach of the peace by itself is not sufficient. To make the order complete, and effective, he must also state the grounds on which he was so being satisfied. The absence to state the grounds of his being so satisfied, in my view, renders the impugned order invalid for non-compliance with the mandatory provisions of sub-sec. (1) of Sec. 145 of the Code.

4. The second ground urged is that the Magistrate could either attach the property or appoint a receiver to the attached property which is the subject matter of the dispute in a proceeding under S. 145 of the Code, if the conditions mentioned in S. 146 of the Code exist, after making a preliminary order under S. 145(1) of the Code. According to him, an order under S. 145(1) and also under S. 146(1) and (2) of the Code could not be made in a composite order in the absence of the conditions referred to in S. 146 of the Code for attaching the property or to appoint a receiver thereof existed. It is provided under S. 146(1) of the Code that if the Magistrate at any time after making the order under S. 145(1) of the Code, considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in S. 145, or if he is unable to satisfy himself as to which of them was then in such possession, a breach of the peace by itself is not sufficient. To make the order complete until a competent Court has determined the rights of the parties there to with regard to the person entitled to the possession thereof. Sub-sec. (2) of S. 146 provides that when the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof.

5. A plain reading of the provisions of sub-sec. (1) of S. 146 of the Code would indicate that the Magistrate is empowered to attach the subject of dispute if any of the three conditions mentioned therein exists to attach the subject of dispute and that to after making a preliminary order under Section 145(1) of the Code. It would mean that the Magistrate, after making a preliminary order in compliance with the provisions of S. 145(1) of the Code should consider whether any of those conditions exists in a given case and if he is so satisfied that any one of such conditions exists, then, at that stage, it is open to him to attach the subject of dispute and place it in the possession of a receiver appointed by him. In the instant case, apart from the appointment of receiver in respect of the subject of dispute, as found in the composite order consisting of the preliminary order made under S. 145(1) of the Code, as well as the appointment of the receiver, the impugned order does not disclose that any of the three conditions referred to in sub-sec. (1) of S. 146 of the Code existed at the time of appointing the receiver. Nowhere it is stated in the impugned order that the case was one of emergency, and that was the only condition on which the receiver could have

been appointed at that stage. Failure to record the reasons provided under sub-sec. (1) of S. 146 of the Code, which empowers a Magistrate either to attach the subject of dispute or to appoint a receiver to the property attached, would, in my view, invalidate the appointment of the receiver to the subject of dispute. I do not propose to express any view in this case whether a preliminary order under S. 145(1) of the Code and also an order of appointment of a receiver under S. 146 of the Code can be validly made in a composite order, as it is not necessary to dispose of the matter involved in this case. For the reasons stated above, it follows that the impugned order is invalid and without jurisdiction for noncompliance with the mandatory provisions of both Secs. 145 and 146 of the Code.

6. In the result, the revision petition is allowed. The impugned order dated 5-11-1977 made in No. C. Mis. 5/77-78 by the Sub Divisional Magistrate, Tumkur, is hereby set aside. The matter is remitted back to Sub Divisional Magistrate for fresh disposal in accordance with law and in the light of the observations contained in the body of this order.