

(1982) 08 MAD CK 0049

In the Madras High Court

Case No : Criminal M.P. No. 6737 of 1980

Executive Officer, Sri Rajagopalaswami Temple,
Pudupalayam, Cuddalore

APPELLANT

Vs

A. Satchidanandam

RESPONDENT

Date of Decision : 17-08-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 145, 482

Citation : (1983) LW(Cri) 17

Hon'ble Judges : Singaravelu, J

Bench : Single Bench

Advocate : T.S. Arunachalam, for the Appellant; C.D. Sekkizhar for Mr. R. Sudarlingam, for the Respondent

Judgement

Singaravelu, J.—This is a petition under S. 482, CrI.P.C. for setting aside the order in CrI.M.P. 8 of 1980 on the file of the Executive Second Class Magistrate, Cuddalore and confirmed in CrI.R.C. 138 of 1980 on the file of the District and Sessions Judge, Cuddalore.

2. The Facts leading to this petition are briefly as follows: The petitioner is Sri Rajagopalaswami Temple, Pudupalayam, Cuddalore (hereinafter referred to as the Temple). The respondent herein had taken on lease from the Temple a vacant site for the purpose of constructing a car shed. Disputes had arisen between the parties over the construction of a superstructure contrary to the terms of the agreement. Meanwhile, the respondent tenant filed an application before the Executive Second Class Magistrate-cum-Tahsildar, Cuddalore under S. 133, CrI.P.C, alleging that there was a margosa tree overhanging the wall of the car shed and that it must be removed. The Magistrate issued a notice purporting to be an order under S. 133, CrI.P.C, requiring the temple to appear in person. I may at once say that the order itself is illegal and beyond the scope of S. 133, CrI.P.C. That apart, without recording evidence, the Magistrate has passed a final order directing the temple to remove the tree. The learned Sessions Judge

simply confirmed the order without setting right the illegality, Hence, this petition under S. 482, CrI.P.C, by the Temple.

3. I have heard learned counsel for both sides, and I am satisfied that the order of the learned Magistrate and that of the learned Sessions Judge are contrary to law and clearly unsustainable, The Magistrate, while dealing with an application under S. 133, CrI.P.C. should first issue a conditional order in Form No. 20 of the Code calling upon the respondent to remove the nuisance. If the respondent objects to do so on his appearance, he should be asked to show cause for the order being made absolute. Thereafter, the Magistrate has to take evidence in the matter as in a summons case and only thereafter, the Magistrate, if he is satisfied, will make the order absolute. In this case, the Magistrate had issued the order in Form No. 25 instead of in Form No. 20. In Form No. 25 relates to proceeding under S. 145, CrI.P.C. namely, dispute with reference to immovable property leading to breach of peace. The Magistrate has treated this as a dispute under S. 145, CrI.P.C. and not under S. 133, CrI.P.C. for which a separate Form is prescribed in the Code.

4. The second irregularity is that the Magistrate has not questioned the petitioner herein (respondent before him) when admittedly the Executive officer of the temple appeared before him. Further, no evidence was recorded as contemplated under S. 133, CrI.P.C. Again, he seems to have inspected the property locally without notice to the parties and no notes of inspection are found in the records. All these are irregularities and an order passed on such irregularities will have to be set aside.

5. It was contended on behalf of the respondent herein that this is a second revision I petition which does not lie and that it is not maintainable. But, then, this is a petition under S. 482 CrI.P.C. invoking the inherent jurisdiction and powers of the Court. For all these reasons, the order passed by the lower Courts is vitiated and is liable to be set aside. Accordingly, all the proceedings except the petition filed by the respondent herein under S. 133, CrI.P.C. are set aside, and the matter is remanded back to the Executive Magistrate for initiation of proceedings, if necessary, according to S. 133, CrI.P.C. and disposal of the same strictly in accordance with law.