
(1977) 03 KL CK 0021
In the High Court Of Kerala

Gabrial Thankayyam and Another

APPELLANT

Vs

Narayanan Nadar Perumal Nadar and Others

RESPONDENT

Date of Decision : 25-03-1977

Acts Referred:

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

Citation : (1977) CriLJ 1870

Hon'ble Judges : S.K. Kader, J

Bench : Single Bench

Judgement

S.K. Kader, J.—This is a petition filed u/s 482 of the Code of Criminal Procedure, 1973, by "C" party Nos. 1 and 2 in M.C. 20 of 1976, now pending before the Sub-Divisional Magistrate, Trivandrum, praying for quashing the preliminary order passed in the said proceedings.

2. A proceeding u/s 145 of the Criminal Procedure Code, 1973, which will hereinafter be referred to as the Code, was initiated by the Sub-Divisional Magistrate, Trivandrum, on the basis of a report submitted by the Sub Inspector of Police, Poovar. On 17th April, 1976, the Sub-Divisional Magistrate passed an order purporting to be a preliminary order Under Sub-section (1) of Section 145 of the Code, in respect of the property described in the schedule to the order, and requiring the parties concerned in the dispute to attend her court in person or by pleader on the date specified therein and put in written statements of their respective claims regarding the actual possession of the subject of dispute.

3. This order is sought to be set aside mainly on the ground that the order in question is one passed without jurisdiction as the learned Magistrate had not applied her mind and got herself satisfied as required u/s 145(1) of the Code.

4. It was argued that it is clear from the order of the learned Magistrate that she had not applied her mind and got herself satisfied that a dispute likely to cause a breach of the peace existed, that she has not stated the reasons or grounds in the order, that the order is based solely on the report of the police and that

therefore the entire order is vitiated by illegality and the same is liable to be quashed. The counsel for respondents 1 and 2 on the other hand contended that it is not necessary that a Magistrate should state in the order the reasons or the grounds of his or her satisfaction, that there are sufficient materials available in the case for passing a preliminary order u/s 145 of the Code. Counsel also contended that none of these defects can affect the legality of the order or the jurisdiction of the Magistrate to pass appropriate orders u/s 145 of the Code and therefore this petition has only to be dismissed. The counsel also faintly argued that the petition is not maintainable.

5. The very jurisdiction of the concerned Sub-Divisional Magistrate to initiate the proceeding has been questioned by the petitioners. The very foundation of the order is attacked and as such it cannot be said that this petition is not maintainable u/s 482 of the Code, Section 145(1) of the Code of Criminal Procedure reads :

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.

The section provides a summary remedy and is intended to meet an emergent situation and to avoid a breach of the peace occurring. On a careful reading of Section 145 as a whole, particularly Sub-section (1), it could be seen that the very foundation of an action under the sub-section is the satisfaction of the Magistrate that a dispute likely to cause a breach of the peace existed on the date of the preliminary order, concerning the possession of any land or water or boundaries thereof situated within his or her local jurisdiction. There is nothing in the section to indicate that the Executive Magistrate is bound to pass a preliminary order as enjoined Under Sub-section (1) of Section 145 of the Code, immediately on receipt of a report of the police or complaint or other information that a dispute regarding the possession of an immovable property exists and that such dispute is likely to cause a breach of the peace. The section does not authorise or confer jurisdiction on the Magistrate to initiate proceedings merely on the strength of the complaint or the police report or other information about the likelihood of a breach of peace on account of a dispute regarding the possession of an immovable property. It is only on being satisfied that there is a real dispute existing concerning the possession of immovable property and that such dispute is likely to cause a breach of the peace, as is clear from Sub-section (1), that the Executive Magistrate gets jurisdiction to initiate proceedings and pass a preliminary order u/s 145 of the Code. This satisfaction he or she may get from a report of the police officer or upon other information. The Magistrate must

be satisfied of the necessity to take action u/s 145 of the Code before a preliminary order is passed and it can not be said that in every case such satisfaction would automatically follow from a report of the police officer or upon other information. The question whether on the materials before the Magistrate, he or she should initiate proceedings or not is in his or her discretion and this discretion, no doubt, has to be exercised in accordance with the recognised rules of law in this regard. It would not be proper or right for this Court in this proceeding to enquire into the question whether the materials before the Executive Magistrate were sufficient or not to pass a preliminary order u/s 145(1) of the Code. But, no doubt, this Court can go into the question whether the Magistrate has applied his or her mind to the materials before him or her and whether he or she was satisfied as contemplated Under Sub-section (1) of Section 145 Cri. P.C. The order impugned reads :

Whereas information has been received before this Court from the report submitted by the Sub-Inspector of Police, Poovar duly countersigned by the Deputy Superintendent of Police, Neeyyattinkara and other connected records received therewith that a dispute likely to cause breach of peace exists between A, B and C party concerning the possession of property scheduled hereunder within the jurisdiction of this Court. I, Sub-Divisional Magistrate, Trivandrum hereby direct the A, B & C parties u/s 145 Cri. P. C. to appear before this Court at 2.30 p.m. on 23-4-76 and put in written statement of their respective claims regarding the actual possession of the subject of dispute and file documents or adduce evidence by putting affidavits of witness and the evidence of such persons as they rely upon in support of such claims.

There is nothing in this order to indicate that the learned Magistrate has applied her mind to the materials before her and was being satisfied that a dispute concerning the possession of an immovable property really existed and such a dispute was likely to cause a breach of the peace. Although Sub-section (1) of Section 145 insists that the order in writing has to state the grounds of satisfaction of the Magistrate, no such grounds or reasons are given in the order impugned. This provision in the sub section that the Magistrate shall make an order in writing, stating the grounds of his satisfaction is mandatory. If the grounds are not stated in the order, it will be difficult to test the correctness and validity of the order. It would appear that it was only because the police reported that a dispute regarding possession of immovable property existed and not because she was satisfied as required Under Sub-section (1) of Section 145 of the Code that she passed the preliminary order under attack.

6. In *Peria Mannadha Goundar and Others Vs. Marappa Goundar*, while dealing with a similar question *Krishnaswamy Reddy, J.* of the Madras High Court has held as follows (at p. 412 of AIR).

It is, therefore, necessary u/s 145(1), Criminal P. C., that the Magistrate having jurisdiction shall make an order In writing that he is satisfied either from a police report or other information that a dispute likely to cause a breach of the peace

exists and state the grounds of his satisfaction before requiring the parties concerned in such dispute to attend his Court and put in written statements. This provision of making the order in writing and stating the grounds of his satisfaction appears to be mandatory. The words "shall make an order in writing stating the grounds of his being so satisfied" would clearly indicate that the order must be in writing and the grounds for satisfaction also must be stated. Unless the grounds are stated in the order itself, it will be difficult to test the correctness or otherwise of the order passed by the Magistrate. So, the preliminary order should state clearly the reasons and grounds on which the satisfaction is based and that the Magistrate had applied his mind in passing the preliminary order.

I am in respectful agreement with the views expressed by the Madras High Court. The order Impugned, for the reasons stated above, is therefore liable to be set aside. This petition is therefore allowed and the preliminary order in question is hereby quashed. This order will not stand in the way of the authorities concerned in taking appropriate action in accordance with law if the authority is satisfied that a dispute relating to possession of immovable property exists and that such dispute is likely to cause breach of the peace.