
(1927) 10 MAD CK 0047
In the Madras High Court

Mamidapalli Sattayya and Others

APPELLANT

Vs

Sankara Kutumbara Rao and Others

RESPONDENT

Date of Decision : 20-10-1927

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1928 Mad 859 : 108 Ind. Cas. 904

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is a petition to revise the order of the Sub-Divisional Magistrate of Nidadavole. The contention of Mr. Suryanarayana is that the Magistrate having found that there was no likelihood of a breach of peace, he had no jurisdiction to pass an order that the lands under dispute should continue in the custody and management of the receiver. The jurisdiction of the Magistrate to proceed u/s 145, Criminal P.C., is derived from the fact that he is satisfied that there is a likelihood of a breach of peace and the moment it is found that there is no likelihood of a breach of peace, his jurisdiction to proceed u/s 145 ceases, and the order for attachment is only pending the enquiry u/s 145, and when the proceedings are dropped because of the absence of a likelihood of a breach of peace the order for attachment automatically comes to an end. In this case after finding that there was no likelihood of a breach of peace the Magistrate following: some decision of the Nagpur Court, thought it fit to continue the attachment and the custody of the property in the hands of the receiver. He had no jurisdiction to do that, the proceedings u/s 145 having been dropped the Magistrate should have directed the receiver appointed by him, to hand over the property to the person from whom possession was taken. The order relating to continuance of the attachment and the management of the receiver is hereby cancelled. The Magistrate is directed to pass an order to hand over the property to the person from whom it was taken.