
(1980) 07 MAD CK 0006

In the Madras High Court

Case No : Criminal M. P. No's. 2888/80 and 2296/80

Manikyaraj Ballal

APPELLANT

Vs

K. Jayaraja Ballal and Others

RESPONDENT

Date of Decision : 02-07-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1980) 07 MAD CK 0006

Hon'ble Judges : Ratnavel Pandian, J

Bench : Single Bench

Advocate : M/s. N.T. Vanamamalai, T. Sudanthiram and Ananthanarayanan for M/s. A. Sasidharan, K.N. Basha and B. Jayaraman, for the Appellant; M/s. V.P. Raman, G. Ramaswami and K.A. Panchapagesan and the Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Ratnavel Pandian, J.—These two petitions are preferred by Thiru Manikyaraja Ballal, the first counter* petitioner in Case Nos. 2/80 and

1/80 respectively (A. 4/42459 and A. 4/42458 of [80 respectively) on the file of the District Magistrate and Collector of Madras, under S. 482,

Crl. P.C. for quashing the entire proceedings takes therein.

2. As the facts in both the petitions, except for a small variation, and the submissions made by the learned counsel appearing for both the parties

are common, a common order is rendered.

3. The brief facts in each of the cases can be summarised as follows:

Crl. M. P. No. 2752/1980 -This petition arises out of Case No. 2 of 1980, which was filed by the first respondent herein before the Executive

Magistrate (District Magistrate and Collector), Madras, seeking an order tinter

S.I 45 of the Code of Criminal Procedure, declaring him to be in lawful possession of the entire property of N. Sathyanathan & Sons Private Limited, Hotel Palmgrove, situate at No. (New) 5, Kodambikkam High Road, Madras-34, and restraining the petitioner and the second respondent from interfering with his peaceful possession and enjoyment of the said property, on the following averments as stated in the affidavit filed by the first respondent herein in support of his petition.

4. The petitioner and respondents 1 and 2 are brothers, of whom the first respondent is the eldest. The first respondent, in pursuance of a tripartite agreement, dt. 27th September, 1973, acquired the undertaking known as Hotel Palmgrove owned by Messrs. N. Satyanathan & Sons Private Limited and was appointed as a Director of the company on 29th August.1973. The entire share holdings held by the company were acquired by the first respondent and some others. Similarly, he has also acquired the controlling interest in Madras Hotel Ashoka (Private) Limited, who are the owners of the Hotel known as Hotel Ashoka at Egmore. The first respondent is also the chairman and Managing Director of this company. Apart from this, their family owns extensive plantations and transport business. Recently, the petitioner herein (Manikyaraji Ballal) and another, with a view to unlawfully exclude the first respondent from the control of the two Hotels, attempted to convene the General Body Meeting of Madras Hotel Ashoka Private Limited on 22nd April, 1980 and of M/s. N Sathyanathan and Sons Private Limited on 21st April, 1980 but failed in that attempt.

5. Having been frustrated by the failure in the above attempt, the petitioner herein and the second respondent are, according to the first respondent's case, likely to prevent the first respondent from functioning as Managing Director and are also likely to resort to physical violence. To achieve the above object, the petitioner herein and the second respondent have brought anti-social elements, who are threatening the loyal staff and also holding out threats stating that the first respondent would not be permitted to function as the Chairman and Managing Director of the Companies. It is further stated by the first respondent that the petitioner herein and the second respondent also purported to draw proceedings in order to lend support to their actions of appointing the second respondent as a

Director, etc., which proceedings are quite illegal. He would add that as the lawfully appointed Chairman and Managing Director of the Companies, he has made substantial investments in these companies. Only at his instance, the petitioner and the Second Respondent were allotted some shares by transfer so as to enable them to become ordinary directors and as such they have no legal right to be in possession of the Hotel or manage the same, which position is clarified by the resolution of the Board, dated 21st April, 1980. The first respondent alone is in possession of the Hotel as the Chairman and Managing Director, and the licenses are all in his name. He was also operating the Bank Accounts. While so, when he left on 30th April, 1980 to other places, the Manager of the said Bank, in collusion with the petitioner and the second respondent, has permitted the accounts of the said Bank to be operated by them, which action is illegal. It was with these allegations that the first respondent filed Case No. 2/80, apprehending breach of the peace.

6. Crl. M. P. No. 2771 of 1980.-This petition arises Out of Case No. 1/80, which was also filed by the first respondent herein before the Executive Magistrate, seeking an order under S. 145, Crl. P. C. declaring him to be in lawful possession of the entire property of Madras Hotel

Ashoka Private Limited, situate at No 33, Pantheon Road, Madras-8, and restraining the petitioner and the second respondent herein from

interfering with his peaceful possession and enjoyment of the said property, on the following averments as stated in the affidavit filed by the first

respondent in support of his petition! The petitioner and the second respondent (who is a medical practitioner) are directors while the first

respondent is the Managing Director, of M/s. Madras Hotel Ashoka Private Limited, having both Boarding and Lodging facilities. A number of

employees are working in the said Hotel which undertakes careering for various social clubs and functions. As the first respondent has to devote

time and attention towards his other businesses, he took the assistance of the petitioner herein and one Raghava Hebbar for attending to such

routine matters in regard to the two hotels, viz., Ashoka Hotel and Palmgrove Hotel. However, he claims to be in over-all charge as the Chairman

and Managing Director of both the companies, owning both of them. The petitioner and the said Raghava Hebbar, with the object of unlawfully

excluding the first respondent, called for a General Body Meeting of M/s. Hotel Ashoka Private Limited on 22nd April, 1980 and M/s.

Satyanathan and Sons Private Limited on 21st April, 1980, but failed to exclude the first respondent. Having been frustrated in the said unlawful

attempt, the petitioner and the second respondent are now likely to prevent the first respondent from functioning as the Managing Director and are

likely to resort to physical violence. To achieve their objects, they have also brought anti-social elements and they are threatening the loyal staff and

holding out threats that the first respondent will not be permitted to function as the Managing Director and Chairman of the companies. The first

respondent claims to have made substantial investments in these companies and only at his instance a few shares were transferred to them to

enable them to become ordinary directors. The petitioner and the second respondent were never managing the hotels, nor do they have any legal

right to be in possession of the hotels or manage their affairs. The licenses issued by the Corporation and the police to run the hotel and restaurant

are in the name of the first respondent. As in the other case also, here also the first respondent was operating the Bank accounts and while so,

when he left on 30th April, 1980, to other places, the Manager of the Karnataka Bank has, in collusion with the petitioner and the second

respondent, permitted them to operate the accounts in the said Bank, which action is illegal. It was with these allegations, the first respondent filed

Case No. 1 of 1980 apprehending breach of the peace.

7. These two petitions were presented on 22nd May, 1980, before the Executive Magistrate who passed the impugned orders in both the petitions

under S. 145 (1), Crl. P.C., on 23rd May, 1980, calling upon the petitioner and the counter-petitioners in both the petitions to appear before her

on 27th May, 1980 at 2 p.m. and put in their statements in respect of the respective claims regarding the actual possession of the premises in

dispute, since the Magistrate was satisfied from the records placed before her by the petitioner therein (first respondent herein) that there was a

dispute with regard to the premises which was likely to cause breach of the peace.

8. The case was posted on 27th May, 1980, on which date both the parties with their respective counsel were present, and time for filing the

written statements was given and the petitions stood adjourned to 3rd June, 1980. Thereafter, the first counter-petitioner in both the case, viz

Manikyaraja Ballal, has preferred the above two Criminal Miscellaneous Petitions invoking the inherent jurisdiction of this Court under S. 482, Crl.

P.C. for quashing the proceedings taken in both the cases.

9. In these petitions for quashing, two separate applications have been filed in Crl. M.P. Nos. 2753 and 2772 of 1980, for staying the further

proceedings in the said cases and this Court has granted interim stay in both the petitions on 3rd June, 1980, on which date Cases Nos. 1 and 2 of

1980 stood posted before the learned Executive Magistrate.

10. The petitioner in both the cases (first respondent herein) filed Crl. M.P. Nos. 2897 and 2895 of 1980 respectively, to vacate the orders of stay

granted by this Court on 3rd June, 1980. Along with the above petitions for vacating the stay, two other petitions have been filed by the first

respondent in Crl. M P. Nos. 2898 and 2896 of 1980 respectively, to implead the Deputy Commissioner of Police, Law and Order, South,

Egmore, Madras as a respondent. These two petitions have been allowed on 2nd July, 1980, and the said officer has been added as the third

respondent in both the petitions, Crl. M.P. Nos. 2752 and 2771 of 1980.

11. The learned Public Prosecutor, appearing on behalf of the third respondent filed two affidavits on 2nd July, 1980, one from the Inspector of

Police, Tenampet, within whose jurisdiction Hotel Palmgrove is situate, and the other from the Inspector of Police, Egmore, Madras, within whose

jurisdiction Hotel Ashoka is situate in the Pantheon Road, wherein they have sworn to the fact that the atmosphere is peaceful and that there is no

incident involving any breach of the peace in respect of both the hotels. After the filing of the above two affidavits by the Inspectors of Police,

Jayaraja Ballal, the first respondent herein, filed an affidavit, dt. 8th July, 1980, stating that the Inspector of Tenampet has registered a case under

S. 145, Crl. P.C. on 20th May, 1980, and forwarded the same to the Tahsildar of Madras, South, for initiating the proceedings under S. 145 and

that there was likelihood of imminent breach of peace on the day when the order was passed and that such an atmosphere still exists. The

petitioner herein Manikyaraja Ballal filed before this Court a third party affidavit from the above-mentioned Raghava Hebbar, supporting the case

of Manikyaraja Ballal and also about twelve other third party affidavits-seven in respect of Hotel Ashoka and five in respect of Palm-grove Hotel

stating that there is no breach of the peace in respect of the said hotels, thereby impliedly stating that no situation has arisen warranting the initiation

of the proceedings under S. 145, CrI P.C. Besides these affidavits, the said Manikyaraja Ballal has also filed a common supplemental affidavit in

both the petitions in support of his case.

12. Mr. N.T. Vanamamalai, appearing for Manikyaraja Ballal, the petitioner in both the petitions, advanced only a common argument contending

that the preliminary orders passed by the Executive Magistrate under S. 145 (1), CrI. P.C. are in flagrant violation of the law and as such they are

unsustainable.

13. The grounds on which the learned counsel made the above submission are as follows:

1. For an order under Sub-s. (1) of S- 145, CrI. P.C. to be a valid and sustainable one, the most essential requirement is that the Executive

Magistrate should satisfy himself, either from a report of the police officer or upon other informally that a dispute likely to cause a breach of the

peace exists concerning any immovable property and that he should make a preliminary order stating the grounds of his being so satisfied.

According to the learned counsel, the Executive Magistrate in these cases should state in the preliminary orders passed by him, the gist of the

information received by him, which necessitated him to direct initiation of the proceedings, and also the ground or the basis of such information, for

his so being satisfied, for passing the preliminary order But, the learned Executive Magistrate in the present case has not indicated in her orders the

information received by her and the grounds on the basis of which she has satisfied herself that there is a dispute with regard to the two hotels in

question for passing the impugned preliminary orders, Hence, the said orders cannot be sustained in law,

2. Even assuming that the averments made in the affidavits filed by Jayaraja Ballal before the Executive Magistrate are taken on their face value

they would spell out only the existence of a dispute arising out of the affairs of the two companies, which could be agitated either before a company

Court or before a civil Court and therefore the learned Magistrate should have

directed the parties to agitate their claims before the Company

Court or a civil Court and get their grievances redressed and should not have directed the proceedings under S. 145 to be initiated.

Mr. V.P. Raman, Mr. G. Ramaswami and Mr. K.A. Panchapagesan, learned counsel appearing for the first respondent in both the petitions,

submitted that the orders passed under S. 145 (1), CrI. P.C. by the Executive Magistrate do not suffer from any illegality, much less manifest

illegality, and the impugned orders are passed strictly in compliance with S. 145 (1), CrI. P.C. mentioning in brief the grounds of her so being

satisfied for passing the said preliminary orders and therefore, this is not a fit case for this Court to exercise its inherent jurisdiction under S. 482,

CrI. P.C. for quashing the orders.

14. Learned counsel for both sides took me through a plethora of decisions in support of their respective submissions, which I shall discuss at the

relevant stage when I take up those submissions for discussion.

15. Section 145 (1), CrI. P.C, reads as follows ;

(1) 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.

Proceedings under S. 145, CrI. P.C. are quasi-civil in character and preventive and summary in nature and their object is to provide a speedy

remedy for the prevention of the breaches of peace arising out of disputes relating to any land or water or the boundaries thereof situate within the

local jurisdiction of the Magistrate concerned. S. 145 contemplates a determination of the fact of actual possession of the subject of dispute,

without any reference to the merits of the respective claims of the disputing parties to a right to possess the same. Ss. 145 to 148, coming under

the caption ""Disputes as to Immovable Property"" in Chap. XII of the Code, arm an Executive Magistrate with the powers to intervene at an

incipient state of the dispute and compel the disputants to have recourse to legal

remedies. Therefore, an Executive Magistrate exercising powers under S. 145 gets jurisdiction only when there is a dispute likely to cause a breach of the peace concerning the immovable property. In other words, if the Magistrate is satisfied that there is no likelihood of the breach of the peace, the only proper course left to him is to decline to proceed under S. 145. As has been pointed out by Subba Rao, J., as he then was, in *Padmaraju Subba Raju and Others Vs. Padmaraju Koneti Raju and Another*, at 101 though it often happens that the Magistrate is moved by an application by an affected party, a preliminary enquiry need not be at the instance of a particular party. The Magistrate may initiate it suo motu, that is to say, the proceedings start not merely from the report of a Police Officer or upon other information received by the Magistrate, but primarily on a subjective satisfaction of the Magistrate concerned that a dispute likely to cause breach of the peace exists concerning any immovable property within his local jurisdiction. Therefore, the initiation of the proceedings under this section is to be directed by the Magistrate only on his being subjectively satisfied, on the information passed on to him either through the police report or other information, that there is a likelihood of the breach of the peace, which subjective satisfaction he shall record in writing. Therefore, before passing an order under S. 145 (1), Crl. P. C, the Executive Magistrate should (1) receive a report either from the police or any other information that there is a dispute concerning the immovable property, which is likely to cause breach of the peace, (2) be satisfied from such report or information that such a dispute exists, and (3) make an order in writing stating the grounds of his being so satisfied about the existence of such a dispute and requiring the parties to appear before him to put in their respective claims relating to the actual possession of the subject of dispute. Prima facie, the duty of the Magistrate is not to go into the merits or the claims of any of the parties to a dispute to possess the subject of dispute, but only to decide whether any and which of the parties was, at the time of the order made by him under Sub-s. (1), in possession of the subject of dispute. This should be read along with the proviso to the said sub-section, which says that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date of the receipt of the police report

or information or after the date and before the date of the order under Sub-s. (1), the Magistrate may treat the party so dispossessed as if that

party has been in possession on the date of his order under Sub-s. (1). As pointed out by the Supreme Court in Bhinka and Others Vs. Charan

Singh, at 965 this section does not confer on a Magistrate any power to make an order directing delivery of possession to a person who was not in

possession on the date of the preliminary order under S, 145 (1). The result of construing this section as a whole would be that where the party

invoicing the aid of the Court alleges or admits in his petition or where there is otherwise material before the Court showing that the dispossession

complained of took place within two months before the information, the Magistrate has the jurisdiction to interfere on behalf of the affected party

notwithstanding the fact that the dispossession took place more than two months before the date of the preliminary order under Sub-s. (1). As the

satisfaction of the Executive Magistrate about the existence of a dispute for passing the preliminary order is a subjective one, the Magistrate is not

required to go into an elaborate, protracted and growing enquiry or investigation, since such an enquiry may in many instances defeat the very

object of the proceedings which are taken for an effective prevention of the breach of the peace.

16. Bearing this principle in view, I shall now examine the cases on hand and see whether the impugned orders suffer from any irregularity vitiated

the proceedings.

17. As the impugned orders in both the cases are common except for the difference with regard to the actual subject-matter of dispute, I shall

extract below the relevant portion of the order under challenge :

Whereas it has been made to appear to me by the petitioner that he is in possession of the premises described below and the counter-petitioners

are threatening to enter upon the premises unlawfully and the petitioner apprehends that the counter-petitioners are likely to cause breach of the

peace

x x x x

And Whereas I am satisfied from the records placed before me by the petitioner, that there is a dispute with regard to the premises referred to...of

village situate within the local limits of my jurisdiction which is likely to cause

breach of peace;

For passing the preliminary order relating to Case No. 2 the documents that were available before the Magistrate as on that date are :

1. Photostat copies of three agreements, dated 27th September, 1973, 14th February, 1974 and 10th October, 1974,

2. Copy of the notice of the Extraordinary General Body Meeting of M/s. Satyanathan & Sons Private Limited, held on 21st April, 1980, with a copy of the proceedings thereon

3. Copy of the letter, dated 24th August. 1979 written by Sri. Raghava Hebbar to Jayaraj Ballul.

4 Photostat copy of the plaint in C.S. 600 of 1979 filed by one R P. David against Jayaraja Ballal and two others on the Original Side of this Court.

5 Photostat copy of the proceedings of the meeting of the Board of Directors of the above-said Private Limited Company, held on 25th February, 1980, along with two letters, dated 27th February, 1980 addressed to Jayaraja Ballal.

6. Photostat copy of the letter dated 29th April, 1980 from the Syndicate Bank, addressed to M/s. N. Sathayanathan A Sons Private Limited, under copies to Manikyaraja Ballal, Jayaraja Ballal and another.

7: Two copies of the petition, dt. 30th May 1980, one addressed to the Commissioner of Police, Madras, by Jayaraia Ballal and the other addressed to the Director-General of Police, Madras, filed by Jayaraja Ballal.

The documents that were available before the Executive Magistrate while passing the impugned order in Case No. 1/80, are:

1. Copy of the notice of the Extraordinary General Body Meeting of the Madras Hotel Ashoka Private limited, held on 22nd April, 1980 with explanatory statements and two copies of the proceedings therein.

2. Proceedings of the Meeting of the Board of Directors of Hotel Ashoka Private Limited, held on 32nd April, 1980.

3. Copies of the petitions, dt 13th May, 1980 addressed to the Commissioner of Police and Director-General of Police, Madras, and sent by Jayaraja Ballal.

18. Now, I shall advert to the decisions cited by the Counsel for the respective

sides. Mr. N.T. Vanamamalai, contending that the specific mention of the grounds on the basis of which the Executive Magistrate has satisfied herself about the likelihood of the breach of the peace in respect of the subject of dispute, is a sine qua non for holding the order as a valid and legally sustainable one, and if there is any failure or omission on the part of the Magistrate to so specifically mention the said grounds, that order has to be quashed, that these impugned orders are to be quashed as they have been passed in flagrant violation of the mandatory provision of S. 145(I), in that they do not specifically mention the grounds on which the Magistrate was satisfied about the existence of a dispute.

18.1. He would first of all rely on *P. Mannadha. v. Marappa. Gounder*, 1960 Cri. L.J. 1410 : 961 L W. (Cri) 179 wherein Krishnaswamy Reddy, J., has held that the provision in S. 145(I), CrI. P.C. about making, an order in writing, stating the grounds of the, Magistrate's satisfaction, is mandatory, that 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 of satisfaction also must be stated, that unless the grounds are stated in the order itself, it would be difficult to test the correctness or otherwise of the order by the Magistrate and that therefore, the preliminary order should state clearly the reasons and grounds on which the satisfaction is based and the Magistrate had applied his mind in passing the preliminary order.

19. Reliance was placed on *Nogammal v. Mani*, 1966 L.W. CrI. 101 wherein Anantanarayanan, O.C.J., as he then was. has pointed out that while passing an order under Sub-s. (1) of S. 145, it is mandatory on the part of the Magistrate to state the grounds of his being so satisfied or language to a similar effect must be employed to indicate that the Magistrate had applied his judicial mind to the information in coming to the conclusion that he should take action under S. 145 (1) and that he should not take action merely on a police report.

20. The next one relied upon was *Gabrial Thankayyam and Another Vs. Narayanan Nadar Perumal Nadar and Others*, . In that decision, the Kerala High Court has held that the Magistrate passing the preliminary order under Sub-section (1) of S. 145 should make the order in writing, stating the grounds of his satisfaction, which is mandatory and if the grounds are

not stated in the order, it would be difficult to test the correctness and validity of the order.

21. Attention of this Court was drawn to Bisse Gowda and Others Vs. State of Mysore and Others, wherein a single Judge of the Mysore High

Court has Observed that a mere statement in the preliminary order made under S. 145 (1) by the Magistrate that he was satisfied from the police

report that a dispute is likely to cause breach of the peace, is not enough, but he must state the grounds of his being so satisfied, which alone

entitles him to make such an order and that non-compliance not only renders such preliminary order without jurisdiction but also vitiates the entire

subsequent proceedings.

22. In D. Parameshwarappa v. State of Karnataka 1979 Cri. L.J. 81. at page 31 it was ruled that where a Magistrate continues an enquiry under

S. 145, Crl. P.C. without issuing a legally valid preliminary order under S. 145 (1) of the Code, the inherent jurisdiction of the High Court can be

exercised to prevent abuse of the process of the Court and to secure ends of justice.

23. Reference was also made to Gadagamma Venkatapathi Vs. Baliarsimhuni Sanyasiraju and Others, , Posuka Kulla and Others. v. Tondalkara

Chikka Hina 41 1908 MLT 213, Hamid Sheikh and Others Vs. Nazir Dar and Others, . Gurdev Singh v. Mastan Singh 1979 Cri. L.J. 33, at

page 13 and Major Mirza v. State 1980 M.L.J. Cri, 39.

24. Then the learned counsel submitted that the mere apprehension of the breach of the peace, by a party invoking the proceedings is not at all

sufficient, but on the other hand it must be to the satisfaction of the Magistrate passing the preliminary order; but in the instant case, the learned

Magistrate, instead of satisfying herself about the existence of a dispute likely to cause breach of the peace, has even in the first instance stated that

it had been made to appear to her by the first respondent that he was in possession of the premises described therein and that the petitioner and

the second respondent herein were threatening to enter upon the premises unlawfully and that the first respondent apprehended that the petitioner

and second respondent were likely to cause breach of the peace. Thus it is clear from the first portion of the impugned orders of the learned

Magistrate that the satisfaction as to the existence of a dispute likely to cause

breach of the peace, on the part of the Magistrate, was not her own subjective satisfaction, but based on the apprehension entertained by the first respondent herein (petitioner in the main case) and therefore, the impugned orders are not passed in strict compliance with Sub-s. (1) of S. 145. On this aspect of the case, he drew the attention of this Court to the decision in *Velur Devasthanam Vs. A. Sambandamurthi Nainar*, . While examining the first part of S. 145 (1), viz., of the satisfaction of the Magistrate as regards the existence of a dispute likely to cause breach of the peace, this Court stated thus:

The foundation of the jurisdiction of the Magistrate is the apprehension felt by him that unless action is taken there will be a breach of the peace. It is the Magistrate who should be satisfied that the apprehension is an existing one and an adequate one for taking action to avert the breach of the peace. Mere apprehension of the party or even of the police or by a superior authority, viz.. the District Magistrate, Is no sufficient ground for taking action.

No doubt, this Court cannot go into the sufficiency of the material available to the Magistrate for arriving at the conclusion about the apprehension of the breach of the peace. But, this Court is not precluded from scrutinizing the preliminary order and examining whether the said preliminary order spells out that it was passed only after the Magistrate had satisfied himself subjectively about the apprehension of the breach of the peace.

25. In this connection he also referred to the decision in *Hari Charan De Vs. Sherali Talukdar*, , in which a Division Bench of the Calcutta High Court has held that orders under S. 145, CrI. P. C, are not to be made when somebody comes and says that he fears that a breach of the peace would occur a considerable time ahead.

26. Then the learned counsel would state that the words ""whereas it has been made to appear"" mentioned in the first part of the impugned order clearly show that it only appeared to the learned Magistrate that there was apprehension of the breach of the peace on the part of the petitioner and that the Magistrate passed the preliminary orders under Sub-s. (1) based on such ""appearance"". According to him, the word ""appears denotes the looking at the case through a narrow inspection hole, as pointed by the Supreme Court in *Sanjay Gandhi Vs. Union of India* (UOI)

and Others, but not being satisfied within the real sense of the term. In this connection reference was also made to the decision in Pyare Lal

Bhargava Vs. State of Rajasthan, , wherein the Supreme Court, while interpreting the meaning of the word ""appears"" coming under S. 24 of the

Evidence Act, held :

The appropriate meaning of the word "appears" is "seems".

Countering the above argument, Mr. V. P. Raman, learned Counsel for the first respondent, cites three decisions, viz., R.H. Bhutani Vs. Miss Man

J. Desai and Others, Sukumar v. State of Mysore (1972) M.L.J Cri. 319) and Gopal Pillai v. State by the Inspector of Police, Bodi. 1976 L.W.

(Cri.) 150

27. The Supreme Court, in Bautani's case⁸, after succinctly referring to the object and scope of S. 145, CrI. P. C, has made the following

observation as regards the preliminary order passed under Sub-s. (1) of that section:

The satisfaction under Sub-s. (I) is of the Magistrate. The question whether on the materials before him he should initiate proceedings or not is

therefore, in his discretion which, no doubt, has to be exercised in accordance with the. well-recognized rules of law in that behalf. No hard and

fast rule can. therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous

that he can arrive at his satisfaction both from the police report or ""from other information"" which must include an application by the party

dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has

satisfied the Magistrate.

The question is whether the preliminary order passed by the Magistrate was in breach of S. 145(1), that is, in the absence of either of the two

conditions precedent. One of the grounds on which the High Court interfered was that the Magistrate failed to record in his preliminary order the

reasons for his satisfaction: The section, no doubt, requires him to record reasons. The Magistrate has expressed his satisfaction on the basis of the

facts set out in the application before him and after he had examined the appellant on oath. That means that those facts were prima facie sufficient

and were the reasons leading to his satisfaction.

28. In Sukumar's case the judgment in which was rendered by a single Judge of the Mysore High Court, two orders passed under S. 145 (1), CrI

P.C., more or less similar to the impugned orders in this case, in respect of properties situate in two survey numbers, were challenged on the

ground that the Magistrate in that case had failed to record in the impugned orders the reasons for his satisfaction to act under S. 145(1), CrI. P.C.

and that the orders passed by him were in breach of that section. The above challenge was attempted to be met by the State contending that

merely because the Magistrate did not state in his orders the grounds or reasons which led to his satisfaction, it could not be said that the impugned

orders were contrary to the provisions of S. 143(1) and were illegal. It was under those circumstances, having regard to the fact that the

Magistrate who passed the impugned orders had before him the first information report and the report of the Sub-Inspector of Police clearly

indicating a serious dispute between the parties likely to cause breach of the peace, rejected the contention made on behalf of the challenger,

holding-

Though that section (S. 145 (1)) requires him to state the reasons leading to his satisfaction, for taking action under that section, the omission on his

part to do so in the present case cannot, for the reasons stated above, expose his orders to the criticism that they were passed mechanically in

clear breach of the provisions of S. 145 (1), CrI, P. C.

Then, following the principles laid down in Bhutan's case 5, the learned Judge held that the above facts were prima facie sufficient for making the

order.

29. In the last decision, I myself have held that the fact that the Magistrate in that case had issued an order under S. 145 (i) would show that he

was satisfied that there was in existence a breach of the peace in respect of the possession of the property, and when the Magistrate had passed

the final order in respect of the same proceeding!, there was an irresistible inference that the likelihood of the breach of the peace existed on the

date of the passing of the order. In this decision, the question arose whether the Magistrate had properly applied his mind with reference to the

documents, to find out as to whether there was likelihood of the breach of the peace as on the date of the passing of the order. In that case, there

was no question of the validity or invalidity of the preliminary order passed in that case and the facts therein were also quite different from the facts of the present case.

30. It would be relevant to note here that in *R.H. Bhutani Vs. Miss Man J. Desai and Others*, the Magistrate, before passing the preliminary order,

examined the petitioner therein on oath and was satisfied that his application disclosed the existence of the dispute and the likelihood of the breach

of the peace. In *Sukumar*'s case, 1972 3 M.L.J.(Cal) 319 as I have already pointed out, the Magistrate had before him the first information report

and the -police report. Therefore, these two decisions were rendered having regard to the peculiar facts of the case and on the basis of the

materials available to the Magistrate for passing the preliminary order. In the case on hand, the only documents that were available to the

Magistrate are those which I have enumerated earlier.

31. Mr. G. Ramaswami cited various decisions in support of his submission that the omission or failure on the part of the Magistrate to state the

grounds of his satisfaction would not vitiate the preliminary order, once the Magistrate has satisfied himself about the existence of a dispute and the

likelihood of the breach of the peace. The decisions cited by the learned Counsel are :

1. *Sayid Mahomed Ghouse Saheb v. Syed Khadir Badsha Saheb*. 16 (1906) M.L.J. 1483: Cri. L.J. 48

2. *Posuka Kulla v. Thandalgara Chikkina* 17 1907 M.L.J. 449

3. *Khosh Mahomed Sirkar v, Nazir Mahomed*. 18 Cal, 352 FB

4. *Vidya Ram Vs. Ganga Sahai*,

5. *Wazir Mahton and Others Vs. Badri Mahton and Another*,

6. *Kurort Patel v. Purusotham Patti*. 1965 (2) Cri. L.J. 788: AIR 1965 Ori 208

7. *Bhagwat Saran Vs. State and Others*,

8. *Kamal Kutty v. Udiyavarma Raja Valia Raja*. 23 M.L.J. 499.: ILR 36 Mad. 275

9. *Amritlal N. Shah v. V. Nzgeswara Rao*. 1946 M.W.N. Cri. 129

10. *Swamimtha Pillai v. Raghavachariar*. 1947 M.W.N. Cri. 161

11. *In Re: Medai Dhalavoy Thirumaiyappa Mudaliar*. (1967) 18 Cri. LJ. 156

12. *S.M. Yaqub and Others Vs. T.N. Basu and Another*,

13. AIR 1927 44 (Privy Council)

14. Velu v. Kuppuswami AIR 1910 Mad. 233

15. Munshi Ram v. R.G. Anand 1973 Cri. L.J. 127

Relying on the principles laid down in the above decisions, Mr. G. Ramasami would very vehemently urge that the preliminary order passed by a

Magistrate on his being satisfied on the materials available before him, should not be quashed because of the failure of the Magistrate to mention

the grounds in the preliminary order, as such an omission is only a curable irregularity and which would not affect the validity of the order or the

jurisdiction of the Court.

32. Coming to the case on hand, the learned counsel would state that in the present case no challenge could be made stating that the learned

Magistrate has not satisfied herself about the existence of a dispute and the likelihood of a breach of the peace on the materials available before

him. According to him, there were sufficient materials before the Magistrate to pass the impugned order and therefore, it must be held that the

Magistrate, only after looking into the documents, has passed the impugned orders, satisfied herself that the materials for passing the preliminary

orders were available to her. The learned counsel would further submit on the basis of the above decisions cited by him and listed above, that even

if this Court comes to the conclusion that the Executive Magistrate has not set out in the orders the grounds, such omission will not vitiate the

proceedings taken by the Magistrate and they cannot be quashed, as such an omission or failure to mention the grounds in the preliminary orders is

a curable irregularity.

33. Then, he would submit that there cannot be any dispute that the Executive Magistrate was within her powers to call upon both the rival

disputants to put forward their respective claims in respect of the subject-matter of dispute, if she was satisfied about the existence of a dispute and

the likelihood of the breach of the peace, and that the mere fact that the Magistrate, in the first part of her order, has stated that it was made to

appear to her by the first respondent that he is in possession of the premises and that the first respondent apprehended breach of peace, does not

lead to the inference that the Magistrate has come to any prima facie conclusion as to the possession of property by the first respondent or that the

Magistrate has initiated the proceedings on the basis of the apprehension entertained by the petitioner. According to him, the second part of the order makes it clear that the Magistrate has satisfied herself on the materials placed before her by the first respondent about the existence of the dispute and the likelihood of the breach of the peace before passing the preliminary orders in question. Therefore, he would submit that the argument advanced by Mr. N. T. Vanamamalai does not merit any consideration.

34. Mr. N. T. Vanamamalai would reply stating that in all the decisions cited Mr. G. Ramaswami, except the decision in Sukumar's Case, 1972

M.L.J. Cri. 319 the revisions were filed before the concerned High Courts only after the final orders were passed and only at that stage the validity

of the preliminary orders passed by the Magistrates had been challenged as one of the grounds and it was under those circumstances: in all those

decisions, it was felt the mere failure to mention the grounds in the preliminary order would not vitiate the proceedings taken by the Magistrate,

evidently as no complaint of prejudice could be alleged at that stage. Coming to the decision in Sukumar's case Mr. Vanamamalai would state that

the view taken by the Mysore High Court in that case that the mere omission to mention the grounds in the preliminary Order cannot expose the

said order to any criticism, cannot be made applicable to the facts of the present case as even in that decision, only on the materials available

therein such as the first information report and the police report, the Court had ruled thus, but had nevertheless pointed out in the following terms

the importance of mentioning the grounds of satisfaction in the preliminary order:

...the importance of mentioning the grounds or reasons in the order hardly requires to be over-euphemized, and that is manifest from the language

of the section itself.

35. After carefully examining the submissions made by the respective counsel and going through all the decisions placed before me by both the

parties in support of their case, I am of the view that it is no doubt mandatory on the part of the Executive Magistrate while passing the preliminary

order under S. 145(1) to state in writing the grounds of his being so satisfied of the existence of a dispute and the likelihood of a breach of the

peace. But, at the same time the Magistrate is not obliged to elaborately set out the entire details of the information received by him. That is to say,

the preliminary order on the face of it should set out the grounds of his being so satisfied or at least employ language to similar effect so as to indicate that the Magistrate had applied his judicial mind to the information in coming to the conclusion that there is in existence a dispute and the likelihood of a breach of the peace and therefore, is a fit case for initiation of proceedings under S. 145. If there is absolutely nothing in the preliminary order showing expressly the grounds of his being so satisfied or at least indicating that he had applied his judicial mind to the information received by him then it would be quite impossible for the parties called upon to put in their claims before him, to predicate as to what led the Magistrate to pass such an order and to make their representations effectively before the Magistrate. Of course, it is not incumbent on the part of the Magistrate to put in the order the Complete and detailed recital of the facts or information received by him, but suffice it to mention therein the grounds which are the conclusions made by him on the report or information placed before him, and then to state that he has satisfied himself upon such grounds (conclusions) about the existence of the dispute and the likelihood of the breach of the peace. The conclusions of facts constituting the grounds are to be drawn not only to the subjective satisfaction of the Magistrate concerned, but they should also be based on some relevant and concrete facts. As pointed out In *Obhoy Chandra Mookerjee v. Mohamed Sabir* I.L.R.(1884)10 Cal.78 the suggested apprehension of a breach of the peace should not be a colorable one. In case the conclusions are found factually baseless, vague or perverse, or to have been drawn on irrelevant or non-existing facts, or to be the result of an abuse of statutory powers, then such orders are to be treated as those passed without jurisdiction and as such liable to be quashed. But, the adequacy or sufficiency of the material on which such satisfaction purports to rest cannot be examined and the subjective satisfaction arrived at by the Magistrate cannot be subjected to scrutiny by the application of the objective tests, since the reasonableness of his satisfaction is for taking a speedy and preventive action when there is in existence a dispute and the likelihood of a breach of the peace.

36. Now, I shall examine the facts of the present case in the background of the above accepted principles of law.

37. The proceedings in both the cases were initiated on the petition presented by a private party, viz., the first respondent herein. The Supreme Court, while examining the question whether a Magistrate before proceeding under S. 145(1), must, as a rule, call for a police report where the petition is moved by a private party or whether the Magistrate can initiate the proceedings without such a report on the basis of the averments made in the petition or in any affidavit accompanying the same by the private party, has, in *R.H. Bhutani Vs. Miss Man J. Desai and Others*, ruled thus :

Was the High Court next justified in observing that the Magistrate ought to have got a police report on the allegations made in the application before he passed his said order ? Such a view has been taken in some decisions. In *Phutanja v. Emperor* 25 Cri. L.J. 1109 : (A.I.R, 1925 Nag.

142 the view taken was that it was a safe general rule for a Magistrate to refuse to take action under S. 145 except on a police report and that the

absence of such a report is almost conclusive indication of the absence of any likelihood of breach of peace, A similar opinion has also been

expressed in *Ganesh v, Venkateswara* 1964 2 Cri. L.J. 100 (Mys,) whereas relying on *Raja of Karvetnagar v. Sowcar Lodr, Govind Doss I L R*

(1906) Mad, 561 the Mysore High Court observed that law and order being the concern of the police it is but natural that the magistrate should

either be moved by the police or if moved by a private party he should call for a police report regarding the likelihood of breach of peace. But the

High Court of Madras in the case of *Raja of Karvetnagar* 5 did not lay down any such proposition but merely sounded a note of caution that in the

absence of a police report the statements of an interested party should not be relied on without caution and without corroboration. The proposition

that the Magistrate before proceeding under S. 145 (I) must, as a rule, call for a police report where he is moved by a private party or that the

absence of a police report is a sure indication of the absence of possibility of breach of peace, is not warranted by the clear language of the section

which permits the Magistrate to initiate proceedings either on the police report ""or other information."" The words other information" are wide

enough to include an application by a private party. The jurisdiction under S. 145 being, no doubt, of an emergency nature the Magistrate must act

with caution but that does not mean that where on an application by one of the parties to the dispute he is satisfied that the requirements of the section are existent, he cannot initiate proceedings without a police report. The view taken in the aforesaid two decisions unnecessarily and without any warrant from the language of sub-section (1) limits the discretion of the Magistrate and renders the words "other information" either superfluous or qualifies them to mean other Information verified by the police. In our view, once the Magistrate, having examined the applicant on oath, was satisfied that his application disclosed the existence of the dispute and the likelihood of breach of peace, there was no bar against Us acting under S. 145(1)

Having observed thus, the Supreme Court, having regard to the facts of the case therein, held that there was no bar for the Magistrate passing the preliminary order since the said Magistrate has expressed his satisfaction on the basis of the facts set out in the application before him and after he had examined the applicant on oath. That is to say, the Supreme Court has expressed its view that the Magistrate In that case had passed the order after taking due caution.

38. When a suggestion was made to the Law Commission that proceedings under S. 145, Crl. P.C., should not be started on a private complaint or information save on a police report regarding the breach of the peace the Commission in its thirty-seventh report, was disinclined to accept that suggestion and had expressed its view as follows-

We have considered this suggestion in detail. Its acceptance would mean omission of the words "other information" in S. 145(1). At present, there is no limitation as to the source of information, on which the Magistrate can act under S. 145. The Magistrate may even act on information gathered at a local inspection: if he records his grounds for acting.

We are not Inclined to limit the section in the manner suggested.

Of course, prudence may require care before acting on a private report. But there should be no restriction so far as law Is concerned.

This opinion of the Law Commission receives support from the decision of the Calcutta High Court in Abhoy Chandra Mookerjee v. Mahomed

Sabir. ILR (1684) 10 Cal. 78

39. Now, in the background of the above observation of the Supreme Court and the view expressed by the Law Commission, I have to examine

the case on hand and see whether the Magistrate has acted with due caution before proceeding on the information set out in the affidavit filed by

the first respondent. On a close examination of the case, I would answer this query in the negative, holding that the Magistrate has not acted with due caution.

40. As regards the materials placed before the Magistrate on the date of the passing of the impugned orders. I have already set out the documents

in detail. Neither in the affidavit nor in any one of the petitions addressed to the higher police officials, the first respondent has made mention of any

specific incident with reference to any specific date on which the petitioner and the second, respondent either attempted or threatened to interfere

with the actual possession of the first respondent. What the first respondent would state in his affidavits as regards his apprehension of the breach

of peace is as follows:

Having been frustrated in their unlawful attempts to get control and exclude me, the Respondents are not likely to prevent any functioning, as

Managing Director. They are also likely to resort to physical violence. The respondents have brought anti- social elements and they are threatening

the loyal staff and holding out threats that I will not be permitted to function as Chairman and Managing Director of the Companies

In both the petitions presented before the higher police officials, the first respondent has made the same complaint as above and has further added

that both the petitioner and the second respondent ""taking advantage of their presence in both the hotel premises they have brought in anti-social

elements". The above statement is very vague and not based on any specific incident and hence, in my view no Magistrate could even subjectively

draw his conclusion of the existence of any dispute leading to a breach of peace, compelling the Magistrate to issue the preliminary Order in

emergency, by invoking Sub-s.(I) of S. 145 of the Code.

41. The other argument relates only to the proceedings of the General Body Meetings of the companies, the notices given therefore and other

connected records inclusive of the copy of the plaint in O.S. No. 600 of 1979. This argument at the best would spell out only the existence of a

dispute over the company affairs among the directors and no further. In fact, one of the resolutions passed in the extraordinary General Body

Meeting held on 21st April, 1980 at the Conference Hall at Hotel Palmgrove, reads ""that all the powers which were entrusted to Sri K.

Manikyaraja Ballal at the Board Meetings held on 18th March, 1978, and 25th February, 1980 be and are hereby withdrawn and cancelled and

that all the concerned authorities be Informed accordingly."" This unfolds that Manikyaraja Ballal, the petitioner herein, before the passing of the

resolution on 21st April, 1980, was entrusted with some powers over the affairs of the companies. One of the resolutions dated 25th February,

1980 referred to in the above resolution, dated 21st April, 1980, and placed before the Magistrate, reads thus:

Resolved to confirm that Sri K Manikyaraja Ballal shall alone be responsible for the day to day administration of the Hotel including the

enforcement of discipline among the staff, and Mr. Jayaraj Ballal is requested not to interfere in matters affecting the discipline of the establishment.

The other copy of the resolution, dated 18th March, 1978 was not placed before the Executive Magistrate. The petitioner has now produced copy

of that resolution which was passed by the first respondent sitting in chair at the meeting of the Board of Directors of M/s N. Satyanathan & Sons,

Private Limited, which resolution stated that the petitioner who is already at Madras looking after the affairs of the company has been appointed as

an Additional Director of the said company and empowered to represent the company in all business matters, tax matters and company law

matters as well as matters relating to Labour and other allied enactments. The copy of the resolution passed in the extraordinary General Body

Meeting at the Madras Hotel Ashoka Private Limited, held on 21st April, 1980, and placed before the Executive Magistrate, shows that a

resolution was passed withdrawing the authority given to the petitioner to sign any papers or other loan documents. Thus, it is seen that before the

resolutions were passed on 21st April, 1980, and 22nd April, 1980, the petitioner Manikyaraja Ballal was authorised to look after all affairs of the

companies Including the administration of the hotels and those powers were withdrawn only a month prior to the filing of the two petitions by the

first respondent before the learned Magistrate. If the Magistrate had examined all these documents carefully she should have arrived at the

conclusion that till the 21st or 22nd of April, 1980, it was the petitioner who was at the helm of affairs of the companies and only thereafter a

dispute as to who should be In the management and control over the administration of the companies arose between the parties. This dispute that

has arisen between the parties will not in any way establish that the actual possession of the hotel premises was taken a way from Manikyaraja

Ballal and that the first respondent, by virtue of the resolution took possession and continued to be in actual any physical possession on the date

when the first respondent filed those two petitions before the learned Executive Magistrate. Under these circumstances in case the petitioner had

refused to hand over the day-to-day administrative work relating to the hotels to the first respondent, the course left open to the first respondent is

to approach the proper forum like the Company Court or the Civil Court but not to invoke the aid of the emergency provisions under S. 145, CrI.

P. C. In my view, the facts and circumstances are strongly against the initiation of the proceedings under S. 145, CrI. P. C.

42. Apart from this, it is admitted by the first respondent himself that the petitioner is in the premises of the hotels. In the petitions presented to the

higher police officials, it is mentioned that the petitioner is in the hotel premises. Secondly, the first respondent has, in his memorandum submitted

by him with reference to the affidavit filed by him before the Executive Magistrate, given the following addresses for service of notices on the

petitioner and the second respondent:

1. K. Manikyaraja Ballal, Hotel Palngrove, No. 5, Kodambakkam High Road. Madras-600034.

2. K. Ratnaraja Ballal, Hotel Palmgrove, No 5, Kodambakkam High Road, Madras-600034.

The above facts are a positive indication that the petitioner was having possession of the Hotel premises and was residing in Palm-grove. The

Magistrate seems to have totally failed to take into consideration all these facts and circumstances before arriving at the conclusion whether the

case of the first respondent that he was In actual possession and enjoyment of both the Hotels can prima facie be accepted in order to initiate the

proceedings under S. 145 (I), Cr. P. C. As submitted by Mr. Yanamamalai the Magistrate has started the proceedings almost basing on the

colorable apprehension entertained only by the petitioner, as borne out by the first part of the preliminary orders.

It is rather doubtful whether the Magistrate would have drawn those proceedings, had she examined all the documents thoroughly and found out

that the facts and circumstances of the case are not in any way in favour of the first respondent. The materials placed before the Magistrate do not

at all warrant any inference as sought to be made by the learned Magistrate that the first respondent appeared to be in possession of the premises

and the petitioner and the second respondent are threatening to interfere with such possession. It seems that the Magistrate has proceeded without

scrutinizing all the materials and has passed the impugned orders on a thorough misconception of facts and the scope of S. 145. CrI. P. C. A plain

reading of the second part of the impugned orders shows that the Magistrate has not set out the grounds on which she has based her satisfaction in

compliance with the requirements of S. 145 (1) in the light of the authoritative judicial pronouncements made by the Supreme Court and the High

Courts. Even assuming that the impugned orders of the learned Magistrate are not vitiated for not setting out the grounds of her satisfaction about

the existence of a dispute and the likelihood of a breach of the peace, in detail, in these two cases, since it is apparently clear, on the face of the

averments made in the affidavits filed by the first respondent and the connected papers filed in support of these cases, that the case of the first

respondent that he is in lawful physical possession and enjoyment of both the hotel premises in question is improbable emergency provisions under

S. 145, CrI. P.C. cannot at all be invoked. The submission made by Mr. G. Ramaswami is that since both the rival parties are claiming possession

over the hotels, that circumstance itself is enough for holding that there is likelihood of a breach of the peace, though it has not so far led to any

blood-shed. This argument cannot be accepted, because a person who is not able to prove his actual possession should not be allowed to invoke

this emergency provision by merely raising an allegation that he is in possession of the premises and suggesting a colorable apprehension in his

mind. If the proposition of Mr. G. Ramaswami is to be accepted, then everyone who raises a false claim against a person who is actually in

possession of an immovable property, can invoke the proceedings under S. 145 and contend that since both of them are fighting over the

possession of the particular immovable property, the Magistrate can very well draw a proceeding under S. 145.

43. Next I shall examine whether there was and is any likelihood of a breach of the peace. It is not in dispute that no police report was available

for the learned Magistrate at the time when she passed the impugned orders. It is to be noted that on 20th May, 1980 the Inspector of Police,

Teynampet, registered a case in Crime No. 838/80 of his station for initiation of a proceeding under S;145, CrI. P. C, on the strength of a report

given by the petitioner herein, alleging apprehension of a breach of the peace at the hands of some anti-social elements brought and instigated by

the first respondent and seeking appropriate actions against the first respondent and his associates. The Inspector submitted his report to the

Tahsildar, Mylapore-Triplicane, requesting him to take action under S. 145, CrI. P. C, submitting as follows :

I am the Inspector of Police, Tenampet. since 14th October, 1979. During my official visits to this Hotel. I have seen only Thiru K. Manikyaraja

Ballal it in. charge and managing the Hotel. Hotel Palmgrove la worth about several lakhs. On account of the recent dispute between Thiru K,

Jayaraja Ballal on one side and Thiru K, Manikyaraja Ballal on the other side about the management of Hotel Palmgrove; a serious threat to peace

is expected. The Deputy Commissioner of Police, Law and Order (South) and Assistant Commissioner of Police, Mylapore, having jurisdiction

over this Hotel sent for both Thiru K. Manikyaraja Ballal and Thlru K, Jayaraja Ballal and warned them against breach of peace. They were

advised to maintain status quo and seek remedy through competent Court of law. They were severely warned against breach of peace and entry to

that effect was made in the general diary by me on 18th May. 1980 at 20.00 Hours.

To prevent any breach of peace and untoward incidents, police pickets were posted. On account of the dispute serious breach of peace and

public tranquility may take place if the dispute is not settled. Thiru K. Manikyaraja Ballal is in actual possession of the Hotel and managing the

Hotel.

This report of the Inspector was pending with the Tahsildar who neither took any

action thereon, nor forwarded the same to the Collector and as such the registration off the above case was not made known to the Collector (the Magistrate who pasted to impugned orders). It was only after take registration of the case under S. 145, CrI. P.C. that the first respondent moved the Executive Magistrate by his two petitions (Cases 1 and 2 of 1980) on I 23rd May, 1980. On the basis of those two petitions given by the first respondent, the Executive Magistrate has passed the impugned orders without knowing the registration of the case by the Police on the strength of the petition given by Manikyaraji Ballal. The above facts clearly lead one to the inference that after having scented about the registration of the cases by the Inspector of Police, Teynampet on the basis of the petition given by the petitioner herein seeking police protection and about the Inspector having reported to the Tahsildar that the actual possession and management of the Hotel Palmgrove is with Manikyaraja Ballal, the first respondent should have rushed with the present two petitions to the learned Executive Magistrate and sought to obtain the impugned orders without disclosing anything about the registration of the case by the police on the petition given by Manikyaraja Ballal. Whatever may be the motive for the first respondent to move the Executive Magistrate, the fact remains that the Police has sent a report supporting the case of Manikyaraja Ballal and that the report was not before the Executive Magistrate at the time when she passed the impugned orders. Therefore, the ground that the circumstance that a case has been registered would be indicative of the likelihood of a breach of the peace existing on the date when the Executive Magistrate passed the impugned orders, cannot be availed of by the first respondent in support of his case that the action taken by the Magistrate is justifiable.

44. After the Deputy Commissioner of Police, Law and Order, has been impleaded as the third respondent in CrI. M.P, rsoS. 2752 and 2771 of

1980. the Inspector of Police, Teynampet, in whose jurisdiction Hotel Palmgrove is situate, and the Inspector of Police, Egmore, in whose

jurisdiction Hotel Ashoka is situate, have filed two separate affidavits swearing that both the hotels are functioning smoothly and the normal

business is being transacted and there is no incident involving any breach of the peace and that the atmosphere is perfectly peaceful, it is true, as

pointed out by the counsel for the first respondent, that it is regrettable that the Inspector of Police, Teynampet, has not made any mention about

the registration, of the case made by him, but simply rest content with stating that there is no incident involving any breach of the peace.

45. The learned Public Prosecutor, when asked as to whether there is any breach of the peace existing in respect of the management of both the

hotels, would assert that there is absolutely no breach of the peace in respect of the management of both the hotels and both of them are being run

smoothly and peacefully.

46. The petitioner has filed a number of affidavits which I have already referred to, in support of his case that he is in possession of both the hotels

and that there is no likelihood of any breach of the peace. During the course of the hearing of the case, a request was made by the first respondent

to call for a report either from the Deputy Commissioner of Police, Law and Order (South) or from the concerned Assistant Commissioner of

Police, about the prevailing situation. I think that the request does not merit any consideration as the local Inspectors having jurisdiction over the

hotels and who are subordinates to the Deputy Commissioner and the Assistant Commissioner of Police have sworn to the fact that there is no

incident involving breach of the peace and the atmosphere is quite peaceful, and therefore, no report need be called for from them.

47. Thus, it is shown that there is no likelihood of breach of the peace as sought to be contended by the first respondent and therefore, if the

impugned orders are sustained and the further proceedings under S. 145 are allowed to be proceeded with, that would result in clear abuse of the

process of the Court,

48. I think it is not necessary to direct the parties to appear before the Executive Magistrate and move an application before her under Sub-s. (5)

of S. 145, showing to her satisfaction that no such dispute exists and seeking the proceedings to be dropped, as the facts and circumstances now

prevailing do unmistakably show that there is no dispute likely to cause breach of the peace. In this, connection, it is relevant to point out that the

Supreme Court in *Muthuraj v. Bhanwarji* 1980 Cri L.J 6 has observed thus :

Proceeding may however be stopped at any time if one or other of the parties satisfies the Magistrate that there has never been or there is no

longer any dispute likely to cause a breach of the peace. If there is no dispute likely to cause a breach of the peace, the foundation for the

jurisdiction of the Magistrate disappears. The Magistrate then cancels the preliminary order. This is provided by S. 145, Sub-s. (5). Except for the

reason that there is no dispute likely to cause a breach of the peace and as provided by S. 145 (5), a proceeding initiated by a preliminary order

under S. 145 (1) must run its full course.

Mr. Vanamamalai, in support of his submission that in the absence of any likelihood of the breach of the peace the orders passed under S.145(I)

are liable to be quashed and the further proceedings are liable to be dropped, would rely on the decisions in *Swyanarayana v. Ankineed Prasad*,

AIR 1014 Mad. 705 : 40 L.W. 504 *Velur Detasthanam v. State*, AIR 1952 MWN Cri. 1 *Sambasiva Rao v. State* 1954 MWN. Cri. 119 and

Kulandaiswamy v. Sherfuddin 1977 LWC 117 He would add that when a Magistrate himself is empowered to drop the proceedings in the

absence of any likelihood of a breach of the peace, definitely this Court can exercise that power under S. 482, Crl. P.C. If on the other hand, the

matter is to be remanded to the Executive Magistrate to examine as to the existence of the breach of the peace and then to drop the proceedings, it

would be tantamount to an abuse of the process of the Court. I see much force in this argument. As it is now demonstrably shown, as pointed out

above, that there is no likelihood of the breach "of the peace, in my view, the preliminary orders passed by the Executive Magistrate have to be

quashed and the further proceedings in the matter under S. 145 have to be dropped.

49. The next contention of Mr. Vanamamalai is that as the facts and circumstances spell out only the existence of a dispute arising out of the affairs

of the two companies, the parties should be directed to get their grievances redressed either before a company court or before a civil court and

should not be allowed to invoke the proceedings under the emergency provisions of S. 145, Crl. P.C. In support of this submission, he would rely

upon the decision in *Samuel Politus and Another Vs. Aziz William Bishop and Others*, wherein the dispute was in respect of a right to manage a

church, and not with regard to the rents and profits. Having regard to the facts of the case, it was held in that case by the Punjab and Haryana High

Court that the dispute in that case did not fall within the purview of S. 145, Crl. P.C. and the order passed under such provision was clearly an abuse of the process of the Court and had to be quashed as one passed without jurisdiction. After going through the above decision cited by the learned counsel, I feel that the principles laid down in that case having regard to the facts therein cannot be made applicable to a case where the evidence and materials available would disclose a dispute over the possession of a particular property and likely to cause breach of the peace, though the matter may even relate to some company affairs. In my opinion, if the dispute is only in respect of the management of the company and not with regard any possessory right of its immovable property leading to a breach of the peace, then certainly S. 145 cannot be invoked. But, in the present case, the fight is with respect to the possession of immovable property. Therefore, but for the fact that the first respondent has not proved his averment that he was in actual possession of the properties at the time of his filing his petitions, or within two months before the date of filing the petitions or his averment that there is any likelihood of a breach of the peace, S. 145 would have been applicable to the facts of the present case and the orders of the learned Executive Magistrate would have been confirmed. Hence, the above submission of the learned counsel cannot be countenanced.

50. In the result, in view of my discussions and my findings on the submission of the learned counsel of the respective parties on the first contention raised by the petitioner, I hold that the impugned orders passed by the learned Executive Magistrate are liable to be quashed and accordingly Crl. M.P. Nos. 2752 and 2771 of 1980 are allowed and the impugned orders are quashed. I also direct that the further proceedings under S. 145 be dropped. It is, however, open to the parties to move the appropriate forum, if they are so advised, to get their grievances, if any, redressed.