

(1983) 01 MAD CK 0032

In the Madras High Court

Case No : Criminal Revision Case No. 202 of 1982 and Criminal Revision
Petition No. 292 of 1982

P. George

APPELLANT

Vs

M. Narayanan Nair

RESPONDENT

Date of Decision : 28-01-1983

Acts Referred:

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

Citation : (1983) 01 MAD CK 0032

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : T.S. Arunachalam, for the Appellant; B. Sriramulu, for the
Respondent

Judgement

M.N. Moorthy, J.

1. This is a petition to revise the order passed u/s 145, Criminal P.C. by the learned Divisional Magistrate and Sub Collector, bhapuram, passed in

C. 2. M.C. 46/81.

2. The respondent preferred a petition dated 9-8-1981 apprehending danger to his life and property and requesting the Magistrate to conduct a

local enquiry regarding his possession or the land in R.S. 198/2 A of Arumanai Village. A preliminary order u/s 145(1), Criminal P.C. was passed

on 6-9-1981. The petitioner and the respondent were called upon to file written statements of their respective claims to the fact of actual

possession of 2 acres 75 cents of land comprised in R.S. 198/2A of Arumanai village. The respondent filed his written statement on 1-9-1981 and

the petitioner on 21-9-1981. Thereafter, evidence, was taken and the final order was passed on 15-10-1981 holding that the respondent's

possession was true. This order was the subject matter of revision before this Court in Criminal R.C. No. 688 of 1981. The case was remitted

back to the learned Magistrate with a direction to treat the order passed by the Magistrate on 6-9-1981 as a preliminary order and to conduct

enquiry afresh, permitting the parties to file documents or affidavit as they deemed fit.

3. In compliance with the direction, the learned Magistrate called upon the parties to file their written statements and let in evidence. The

respondent filed his written statement on 11-1-1982. The petitioner without filing a statement took adjournment on three occasions. Finally on 22-

2-1982 he filed a petition to the effect that he intended to get the case transferred from the file of the learned Magistrate and declined to take part

in the enquiry. He was set ex parte on 22-2-1982.

4. The learned Magistrate proceeded with the enquiry and examined three witnesses on behalf of the respondent who filed Exs. P-1 to P-11 to

support the fact of his possession of the disputed property. The witnesses who were immediate neighbours of the respondent supported the case

or the respondent regarding possession of property in R.S. 198/2A of Arumanai village. On their testimony, the Magistrate was satisfied there was

likelihood of breach of peace. The Village Officer, Arumanai, was also examined. He testifies to the fact that the Revenue records show that the

possession of the land in question is with the respondent. The report of the Police also is to the effect that the disputed property belongs to the

respondent and as there were complaints there was Police investigation also.

5. The respondent has proved by documentary evidence that he was in possession of the disputed land. He paid house tax for the building situate

in the disputed land. He has paid the land tax as shown by Exs. P-7, P-8, P-10 and P-11. On the materials placed before the learned Magistrate,

he found the respondent has been in undisputed possession of the property in R.S. No. 198/2 of Arumani village till 9-8-1981. On 9-8-1981, the

petitioner trespassed into the property and put up a hut in a portion of land unlawfully. In the present case, the petition was lodged on 9-8-1981

and the preliminary order was passed on 6-9-1981 u/s 145(1), Criminal P.C. The respondent is entitled to restoration of possession of the portion

in which the petitioner has trespassed and put his shed. The learned Magistrate

passed an order that the respondent was in possession of the disputed land and trees in R.S. No. 198/2A and that he is entitled to retain such possession and the portion of the property unlawfully trespassed by the petitioner was restored to him.

6. Mr. T. S. Arunachalam, learned Counsel, appearing for the petitioner assailed the order of the lower court on the ground that it was an order

passed ex parte. On 22-2-1982 itself, the petitioner has made it clear to the Magistrate that he was seeking a transfer of the case from him. In

spite of this on the same day, the learned Magistrate has treated the petitioner as ex parte. In fact the transfer petition was filed before the learned

District Magistrate, Nagercoil, on 25-2-1982. On 27-2-1982 the petitioner appraised the learned Magistrate by a registered letter that a transfer

petition was pending before the learned District Magistrate. On 12-3-1982 the petitioner filed a petition before the learned Magistrate. Still, the

Magistrate thought fit to proceed with the enquiry and pass final orders on 7-4-1982. It was also contended the order of the learned Magistrate

failed to mention the names of persons who were examined on the side of the respondent and the details of the documents said to have been

marked by the respondent. The examination of the Village Officer suo motu is not warranted. The learned Magistrate is not justified in proceeding

with the enquiry and passing the final order ex parte.

7. Mr. B. Sriramulu, learned counsel appearing for the respondent, contended that the petitioner took time on three occasions to file written

statements and ultimately without filing the said statement on 22-2-1982, filed a petition to get a transfer of the case from the file of the learned

Magistrate. From 22-2-1982 till orders were passed on 7-4-1982 no order of transfer was obtained by the petitioner. Hence, he contended, there

is no other go for the learned Magistrate except to complete the enquiry and pass the final order.

8. The learned Magistrate has taken into consideration all the relevant materials to come to the conclusion that it was the respondent who was in

actual possession of the disputed property. It is unfortunate that this order u/s 145, Criminal P.C. by the learned Magistrate has come to be passed

ex parte, as the petitioner declined to participate in the enquiry. Even though transfer petition was filed on 25-2-1982, no orders could be obtained

by the petitioner. It was not as if the enquiry was rushed through and an order passed to fructify the benefits of the petitioner getting a transfer

order. The learned Magistrate examined the witnesses on behalf of the respondent and allowed to file documents to support his case. He then

thought fit to examine the Village Officer before coming to a just decision. Only on 7-4-1982 the final order was passed. There was plenty of

opportunity for the petitioner to have got orders of transfer from the District Magistrate or he could have even moved this court for appropriate

orders if he was not prepared to take part in the enquiry before the learned Magistrate.

9. Ordinarily, orders passed u/s 145, Criminal P.C., are not lightly disturbed. It is only in exceptional cases such a thing is being done. The reason

is that the main purpose of the proceedings is to maintain peace and secondly, whoever is aggrieved by the order so made has recourse to get

remedy in a Civil Court. After all, orders passed under S. 145, Cr.P.C. are tentative subject to the rights of the parties being determined by a Civil

Court. No doubt, I am unable to say some of the points raised by the learned counsel for petitioner are without substance. He correctly pointed

out that the order is not appended with the witnesses' names or the documents filed in the enquiry. On that score alone, I am not inclined to set

aside the order of the lower court and remit it for further enquiry, as it is brought to my notice, regarding the same disputed property, the petitioner

has gone to the Civil Court for determination of his rights. No useful purpose is served by remitting the present case for further enquiry as parallel

proceedings simultaneously in a Civil and a Criminal Court are not warranted.

10. As I have stated before, the nature of the proceedings u/s 145, Criminal P.C. are such that the Magistrate is primarily responsible for

maintenance of law and order and he should be in a position to discharge his responsibility irrespective of the fact whether one party or the other

makes an appearance before him or not. If a party is absent, the Magistrate can proceed ex parte, the only limitation being the order should reveal

that there is sufficient material to show that the party who was present in Court is entitled to have an order in his favour. In the present case, the

learned Magistrate has adverted to the evidence and the documents produced before him for arriving at the conclusion that it was the respondent

who is entitled to have an order in his favour. I am of the opinion that the order is correct and it has to be upheld. The Criminal revision petition stands dismissed.

11. Petition dismissed.