
(1914) 01 MAD CK 0020
In the Madras High Court

Palani Chetty and Others

APPELLANT

Vs

Rathina Chetty and Others

RESPONDENT

Date of Decision : 30-01-1914

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 439

Citation : AIR 1915 Mad 10 : 24 Ind. Cas. 597 : (1914) 26 MLJ 208

Hon'ble Judges : Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—This is a dispute about the possession of a Bhajana Mattam. The Sub-Divisional Magistrate has passed an order u/s

145, Cr.P.C. to the effect that the 1st defendant is in possession and shall remain in possession till evicted in due course of law. The petitioners

have filed this Revision Petition under Sections 435 and 439, Cr.P.C. and Section 15 of the Charter Act.

2. As regards Sections 435 and 439 Cr.P.C., they are clearly not applicable (See Clause (3) of Section 435)

3. Coming to Section 15 of the Charter Act, there are no doubt observations in the case, Kamal Kutty v. Udayavarma Raja Valia Raja (1912)

M.W.N. 1154 . s.c. 23 M.L.J. 490 to the effect that ""it has never been customary to interfere"" u/s 15 of the Charter Act "" except where it can be

said that the Magistrate's order was passed without jurisdiction."" If I may say so with respect, that custom or practice is a very wholesome custom

which should not be lightly departed from, especially in cases of orders u/s 145 Cr. P.C., with respect to which the Indian Legislature has indicated

its view that it is inadvisable to interfere in revision under Sections 435 and 439, Cr.P.C., I do not think that the case in Kamal Kutty v.

Udayavarma Raja Valia Raja (1912) M.W.N. 1154 . s.c. 23 M.L.J. 490 decides that this Court has no power or jurisdiction to interfere u/s 15 of

the Charter Act unless the Magistrate had no jurisdiction to pass the order sought to be revised. The learned Judges, no doubt, refer to Bhaskari

Kasavarajudu v. Bhasharam Ghalapatirajudu ILR (1908) M. 318 where there is an observation that ""The Magistrate had jurisdiction to act u/s

145 Cr. P.C. and this Court has no jurisdiction to interfere."" But the report in Bhaskari Kasavarajudu v. Bhaskaram Ghalapatirajudu ILR (1908)

M. 318 shows (see footnote at page 318) that the petition in revision in that case was filed only under Sections 435 and 439 Cr. P.C., (and not

under the Charter Act also) and the High Court had therefore no jurisdiction to interfere under those Sections of the Criminal Procedure Code.

4. In the present case, following the usual custom from which I see no sufficient reason to depart, I decline to interfere u/s 15 of the Charter Act as

no question of the Magistrate's Jurisdiction is involved and as I am not satisfied that there has been any gross miscarriage of Justice. The Sub-

Magistrate gave possession of the Mattarn by consent of both sides to a Poosari in March 1913. That Poosari (it is said) was a sort of receiver

appointed by the Magistrate. I am unable to hold so. The Sub-Magistrate had no power to appoint a receiver in proceedings u/s 144 C.P.C., The

Sub-Inspector of Police who gave possession to the Poosari did not treat the Poosari as the Receiver of the Sub-Magistrate's Court, for, he says

that "" respectable citizens of the Vennia Caste agreed to hand over the properties to the Court of Police when called upon."" Surely, the Receiver of

a Court is not bound to hand over the properties to the Police. Again the Sub-Magistrate construed the Poosari as in possession with a liability on

some of the leaders of the community to produce the properties when required by any Court."" Hence the cases of Joyanti Kumar Mookerjee

v. Middleton ILR (1900) C. 785 Ismail Ghani v. Khatinna Rowther (1911) 22 M.L.J. 154 and The Hindus of Kannampalaiyam Village v.

Kaikkolar Christians (1911) M.W N. 44 quoted by the petitioner's learned vakil to the effect that a Receiver's possession is the possession of the

party entitled and that an order u/s 145 could and should be passed in favour of the person in possession within 2 months before the receiver was

appointed though that possession had ceased (by the Receiver's having taken over possession) more than 2 months before the date of the order

under Clause (1) of Section 145, seem not to be applicable-I might be permitted also to reserve with the greatest respect, my views as to the correctness of those decisions when the matter has to be considered by me in any case in which that question directly arises.

5. In the result, I dismiss the petition.