
(1906) 07 MAD CK 0008
In the Madras High Court

Rajah		APPELLANT
	Vs	
Lord Govind Doss Krishna Doss		RESPONDENT

Date of Decision : 30-07-1906

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1906) 16 MLJ 419

Hon'ble Judges : Moore, J;Davies, J

Bench : Full Bench

Judgement

Moore, J.—In order that a Magistrate may have jurisdiction to act u/s 145, Cr.P.C. he must be satisfied from a police report or other

information that a dispute likely to cause a breach of the peace exists concerning any land, & c. It is, therefore, necessary to ascertain what

information Mr. Pinhey, District Magistrate, North Arcot, had before him, when he passed his order of the 9th March 1906, and Mr. Rice who

succeeded him as District Magistrate when he passed his final order in this matter on the 2nd April. From Mr. Pinhey's order it is clear that he had

no Police report before him. He was District Magistrate. He believed "that" there was serious danger of riots breaking all over a whole taluk in one

of the Zamindaris in his district, and yet, as far as can be ascertained from the record, he never referred the matter to the District Superintendent of

Police for enquiry and report or obtained any information from that officer or any of his subordinates in the Police before he jumped to the

conclusion that there was a danger of riots all over a considerable tract of country. All that the District Magistrate had before him was a petition

from a Deputy Tahsildar in the employment of Mr. Lodd Govind Doss, the mortgagee who had taken over possession from the Court of Wards.

Mr. Lodd Govind Doss was, it is clear, most anxious that the District Magistrate should take action under the Criminal Procedure Code and

decide that he was in possession. The facts being as stated, it must be held that the District Magistrate should have received the Deputy Tahsildar's

statements with great caution and should have declined to act on them unless they were corroborated by some less interested person. This officer

should also have been summoned before the District Magistrate and examined on oath, full opportunity being given to the vakil of the Raja of

Karvetnagar to cross-examine him, more especially, as to the statements that he makes in his petition as to the danger of riots breaking out in

various villages in the Taluk. Nothing of the sort, however, was done, and Mr. Pinhey considering that the action that had been taken by the Raja

on the surrender of the management by the Court of Wards could not but lead to breach of the peace and disturbances throughout the taluk,

placed on record in his order of the 9th March 1906 that he was satisfied that a dispute likely to cause a breach of the peace existed and directed

the parties concerned in the dispute to attend at his Court within 10 days. Mr. Rice took the "matter up and passed final orders on the 2nd April.

He stated in his proceedings that the facts of the case had been clearly set out by his predecessor and he accordingly embodied Mr. Pinhey's

order of the 9th March 1906 in his proceedings. He then went on to add that, as each party was claiming possession of the Taluk and trying to

collect rents and let leases executed to distrain and generally to exercise acts of ownership, he was satisfied that a collusion was inevitable sooner

or later. The vakil for the Raja of Karvetnagar wanted to produce evidence to show that there w""is no danger of a breach of the peace. The

District Magistrate, however, refused to receive any evidence. It is clear that in so refusing Mr. Rice acted contrary to law. Section 165, Clause 5

of the Criminal Procedure Code lays down that nothing in that section shall preclude any party required by a preliminary order to attend at the

Magistrate's Court, as the Raja had been required, from showing that no dispute likely to cause a breach of the peace existed or had existed and

that it was consequently not open to the District Magistrate to refuse to receive the evidence tendered to him. I feel very doubtful if it could be held

that the petition of the Deputy Tahsildar afforded information such as to give Mr. Pinhey jurisdiction to pass his order of March, but however this

may be, I have no hesitation in holding that Mr. Rice's subsequent refusal to receive evidence gives this Court no option but to declare that this order of April was passed without jurisdiction and to direct that it be on that account set aside.

Davies, J.

2. I concur throughout with my learned colleague. I would go even further and hold that ab initio the District Magistrate acted ultra vires in clubbing together 230 alleged subjects of dispute and treating them as one. Each village stood on its own footing. The Raja had possession of some and the mortgagee of others. Before the District Magistrate made his declaration that there was a dispute likely to lead to a breach of the peace, he should have found that that was so in respect of all the villages, but as Mr. Justice Moore has pointed out, he has no materials for saying that such a dispute existed in respect to a single village.

3. Than when he came to the question of possession he should have decided which party at the date of his order was in actual possession of this or that village and confirmed that possession. Here without taking any evidence on the point, he has arbitrarily found that the mortgagee was in actual possession of all the villages, which, as a matter of fact, we understand, he was not. This course would no doubt have entailed a prolonged enquiry, a circumstance which itself indicates that the Legislature did not contemplate wholesale proceedings of this sort in cases under Chapter XIV of the Code of Criminal Procedure, the object of which is to provide prompt action to avert breaches of the peace. Had the provisions of the Code Been strictly followed the case before us could not have been disposed of in so off-hand a fashion.