

(1937) 02 MAD CK 0022
In the Madras High Court

Sevugan Chettiar and Others

APPELLANT

Vs

Karuppan Chettiar and Others

RESPONDENT

Date of Decision : 01-02-1937

Acts Referred:

Citation : AIR 1937 Mad 487 : (1937) 45 LW 367

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is a petition to revise the order of the Subdivisional Magistrate, Ramnad, dated 18th January 1937. The order

purports to be one made u/s 144(4). The original order u/s 144(1) was passed by the Taluk Magistrate of Sivaganga and it related to the

performance of what is known as Sevvai Pongal in a certain temple in Nattarasankottai. It is not necessary to go into the merits of the dispute

which led to the passing of this order. It is enough to say that there is a small minority in that community to which the temple belongs whose

participation in the festival along with the majority of the community is resented by the majority. The Taluk Magistrate passed an order that Sevvai

Pongal by the minority was to be per. formed on 19th January and by the majority on 26th January, both being Tuesdays and he directed that

neither party should interfere with the celebration of the festival by the other party on the date allotted to it. The minority presented an application

to the District Magistrate on the very day on which the Joint Magistrate passed the order, that is to say, 16th January. The application was

apparently made under Sub-section 4, Section 144, Criminal P.C. That petition or application was transferred by the District Magistrate to the

Joint Magistrate Ramnad, for disposal on the same day. The Joint Magistrate, Ramnad, has no territorial jurisdiction in Nattarasankottai which

belongs to the Devakottai Subdivision and lies within the jurisdiction of the Subdivisional Magistrate, Devakottai. The latter was however on leave

and the joint Magistrate, Ramnad, was in charge of the Devakottai Subdivision at the time. He continued to be in charge till 17th January including

the 17th itself.

2. The Subdivisional Magistrate, Devakottai, returned to duty on the 18th morning and resumed charge of the division and thereby the Joint

Magistrate Ramnad, became functus officio, so far as charge of Devakottai division and his jurisdiction over that division were concerned, in the

morning of the 18th. The order that is now sought to be revised is one passed by the Subdivisional Magistrate, Ramnad, on the 18th, that is to say,

after he had become functus officio in this manner. The order is attacked on several grounds. So far as the power of the District Magistrate to

transfer is concerned, it is not necessary in my opinion to decide whether in a case of this kind there is a power to transfer. No specific authority on

the point has been quoted, but I have said some time ago that there is no power of transfer in respect of an order passed u/s 144. In this case

however even assuming that there was no power of transfer, the order of transfer cannot be regarded as void and cannot be set aside merely on

that ground in view of Section 529(f), Criminal P.C., and also of Section 531 of the same Code. The other objections are (1) that the Magistrate

to whom the application u/s 144(4) was transferred had ceased to have jurisdiction to deal with the application on 18th January when he passed

the order, and that the order is therefore void, and (2) the order actually passed goes beyond the jurisdiction conferred by Section 144(4) even if

the Magistrate had such jurisdiction; in other words, that the order which he passed is not a mere rescission or alteration of the order passed by the

Taluk Magistrate but goes beyond it. There can be no doubt that a Magistrate who has ceased to possess jurisdiction cannot pass any valid order

in respect of any matter even if it was properly before him before he became functus officio. In this particular case apart from the question of

whether the order was valid or not, the Joint Magistrate, Ramnad, had no doubt jurisdiction to deal with the matter when he received the

application by transfer, because he was then in charge of the Devakottai Sub-Division, and thus had jurisdiction in the capacity of a Magistrate to

whom the Taluk Magistrate of Sivaganga was subordinate, to alter or rescind any order made by the Taluk Magistrate. But when he actually

passed the order he had ceased to be in charge of that division and therefore ceased to be a Magistrate to whom the Taluk Magistrate was

subordinate, and the jurisdiction conferred by Section 144(4) had ceased to exist so far as he was concerned. That sub-section runs as follows,:

Any Magistrate may, either on his own motion or on the application of any person aggrieved rescind or alter any order made under this section by

himself or any Magistrate subordinate to him, or by his predecessor in office.

3. The joint Magistrate of Ramnad on the 18th January was not then either the Magistrate who passed the order or his successor or the Magistrate

to whom the Magistrate who passed the order is subordinate. The jurisdiction conferred by Section 144(4), Criminal P.C., is neither appellate nor

revisional, and that jurisdiction is a special one that can be exercised only if the actual terms of the section are strictly satisfied. I am therefore of

opinion that the joint Magistrate of Ramnad who had ceased to be in charge of the Devakottai sub-division on the 18th January had no power to

rescind or alter the order made by the Taluk Magistrate, Sivaganga, on the 16th January. It is clear from Section 530(1) that when any Magistrate

not empowered by law issues an order u/s 144, his proceedings shall be void. This observation applies with equal force to the present order as to

an order which comes strictly within the limits of Sub-clause (4). The order passed by the joint Magistrate did not merely alter or rescind the order

of the Taluk Magistrate; it also prohibited the performance of the festival altogether by either of the parties. In fact, he went to the length of passing

a separate order u/s 144(2) prohibiting members of the Nattarasankottai public from celebrating the festival. The order runs as follows:

Whereas it has been made to appear to me that a breach of the peace is imminent if you members of the two parties, names given separately, and

your followers celebrate Sevvai Pongal together, and whereas you are unwilling to celebrate the festival together amicably, I hereby prohibit you

members of the Nattarasankottai public, from celebrating Sevvai Pongal. This order will be in force for a period of two months. Given under my

hand and the seal of the Court this 18th day of January 1937.

4. This order passed by the joint Magistrate, Ramnad, is one obviously passed without jurisdiction because he had admittedly no territorial

jurisdiction so far as Nattarasankottai was concerned on the 18th January; in no way can it be said that this jurisdiction was conferred upon him by

the transfer of the application by the District Magistrate even though the transfer is considered valid. That order of transfer, if considered valid,

would have given him jurisdiction either to alter or rescind the order of the Taluk Magistrate which was complained of by the petitioners; it did not

certainly authorize him to pass a new order altogether, in other words, to substitute an entirely new order of his own for the order which was

sought to be altered or rescinded. In short, it may be said that while it is open to the superior Magistrate to alter the order, he cannot alter the party

to be affected by the order. Where a Subordinate Magistrate allows a certain party to perform a certain festival on a certain day, it cannot be

prohibited by the superior Magistrate on an application by another party u/s 144(4), Criminal P.C., or where a subordinate Magistrate prohibits

one party from doing a certain act the superior Magistrate cannot u/s 144(4), Criminal P.C., prohibit the opposite party from doing that act.

Jurisdiction is given to him by this sub-section only to alter or rescind the order by which the petitioners before him are said to be aggrieved, and he

may remove altogether the grievance complained of or reduce its extent as it were, but he cannot make a new order which would constitute a fresh

grievance to a party not before him.

5. This is exactly what has been done in this case. The superior Magistrate has prohibited a party which was not before him from doing a certain

act which had been permitted by the Taluk Magistrate to be done on the 26th January. Even if he had territorial jurisdiction this would not be

permissible Under Sub-clause (4) though a separate order Under Sub-clause (1) or Sub-clause (2) could be made by a Magistrate having

territorial jurisdiction. It therefore follows that the order sought to be revised, namely, the order of the joint Magistrate of Ramnad, dated the 18th

January 1937, is an order which is void and it must be declared to be such. That order is accordingly declared to be void and to be of no force or

effect. It is not necessary for me to express any opinion on the merits of the

contentions of the parties or to indicate what should now be done by the Magistracy if anything at all has to be done u/s 144, Criminal P.C., in respect of this dispute. That is a matter entirely within the discretion of the Magistrate having jurisdiction and I do not propose to say anything which would in any way fetter their discretion in the matter.