
(1908) 12 MAD CK 0020
In the Madras High Court

Subramania Pillai and Others

APPELLANT

Vs

Sannasia Pillai and Others

RESPONDENT

Date of Decision : 03-12-1908

Acts Referred:

Citation : 2 Ind. Cas. 310

Hon'ble Judges : Sankaran Nair, J; Munro, J

Bench : Division Bench

Judgement

1. In this case the Magistrate gave notice to the Petitioners u/s 147 of the Criminal Procedure Code. When the case came on for hearing objection

was taken that the case did not fall u/s 147 of the Criminal Procedure Code. To this it was answered that the case even if it did not fall u/s 147 of

the Criminal Procedure Code did fall u/s 145, Criminal Procedure Code. The Magistrate passed the following order:

It seems to me that the Court has jurisdiction to try the case and evidence of possession has to be gone into." We cannot gather from the order that

the Magistrate actually decided that the case fell u/s 145 of the Criminal Procedure Code and gave notice to the parties that he intended to deal

with it under that section. He, however, eventually passed an order purporting to be u/s 145 of the Criminal Procedure Code. Strictly speaking the

Magistrate acted without jurisdiction in passing an order u/s 145 of the Criminal Procedure Code without first making an order under the first

paragraph of that section. If, however, it appeared that the Magistrate after hearing the preliminary argument told the parties he intended to

proceed u/s 145 of the Criminal Procedure Code and that they should if they wished put in the written statements referred to in the first paragraph

of Section 145 of the Criminal Procedure Code, we might perhaps not have been prepared to say that this was a lit case for our interference. But

as even this was not done we think that the order was passed without jurisdiction.

2. We therefore, set it aside.