
(1961) 10 MAD CK 0053
In the Madras High Court

Ulagampatti Savarinayagam and Others	APPELLANT
Vs	
Koil Pillaimanickam and Others	RESPONDENT

Date of Decision : 31-10-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1962) 2 MLJ 99

Hon'ble Judges : Sadasivam, J

Bench : Division Bench

Judgement

Sadasivam, J.—This is a petition by the B Parties in M.C. No. 19 of 1960 on the file of the Ex-officio First Class Magistrate and Assistant Collector, Dindigul, to revise the order passed by him u/s 145, Criminal Procedure Code.

2. The parties are close relations and the dispute is with regard to a church built on Survey No. 405, Old Survey No. 300/C1/B Line Street, Dindigul Town. The A party filed the petition M.C. No. 19 of 1960 on 31st August, 1960, u/s 145, Criminal Procedure Code. The Ex-officio First Class Magistrate called for a report from the Sub-Inspector of Police and the report was submitted on 14th October, 1960 stating that there was a dispute between the parties and that there was a likelihood of the breach of the peace. Subsequently, the Ex-officio First Class Magistrate passed a preliminary order u/s 145, Criminal Procedure Code, and in pursuance of the order the petitioners filed a written statement pleading that the General Body of the Line Street Harijan Christians made over the Church and the properties to the Right Rev. Bishop of Trichirapalli by a registered deed of gift deed dated 11th October, 1960 and that after that date the actual possession and management of the said Church and the properties were exclusively with the Bishop. The learned Ex-officio First Class Magistrate considered the documents and passed an order on 12th May, 1961, finding that the A Party was in possession of the properties and that they should be allowed to continue in possession till evicted by law.

3. The main ground on which the petitioners seek to revise the order is that after

they withdrew from the proceedings there could not be any apprehension of breach of the peace and that the learned Ex-officio First Class Magistrate should not have proceeded to pass the order u/s 145, Criminal Procedure Code. Reliance was placed on the decision in Pakkiriya Pitted v. Official Receiver, West Tanjore 1936 M.W.N. 209 in support of the contention. But that decision is clearly distinguishable on the facts of the present case. In that case the B party ceased to take any interest as the lease in their favour was cancelled by the Court, but the Sub-Divisional Magistrate proceeded to implead the Official Receiver and pass an order without further considering the question whether there was any likelihood of the breach of the peace. The following observations at page 725 in Khudiram Mandal Vs. Jitendra Nath and Another, are apposite to the facts of the present case.

The question of being satisfied as to the likelihood of a breach of the peace occurring is an element to be considered for an order u/s 145 (1), but once the proceedings have been validly initiated, it is not one of the essential ingredients in passing the final order u/s 145 (6). No doubt, the jurisdiction being a preventive one, the moment a Magistrate is satisfied that there is no longer a possible apprehension of a breach of the peace he should bring the proceedings to an end. But that does not mean that he should at every stage go on recording his satisfaction as to the existence or otherwise of such an apprehension. If he chooses to go on, it must be presumed that he is not satisfied that the apprehension has ceased.

4. It is significant to note that the petitioners did not urge before the Sub-Inspector of Police that there was no longer any dispute on account of their having executed a Gift Deed a few days earlier. Further even the learned Ex-officio First Class Magistrate has passed a preliminary order on 9th December, 1960, after looking into the report of the Sub-Inspector about the likelihood of the breach of peace. It is only subsequently the petitioners have filed written statement putting forward the gift deed. It is true that if a definite plea had been put forward that the dispute between the parties had ceased and the Ex-officio First Class Magistrate had found that there was no likelihood of breach of the peace, he would have dropped the proceedings. But the facts stated above show that no such thing happened in this case. The petitioners could have no grievance to come to this Court if really they bona fide withdrew from the proceedings. There is still dispute between the parties about the Church. In fact the learned Advocate for the petitioners stated that as Roman Catholic Christians they are still interested in the subject-matter of the dispute. Therefore it could not be said that the apprehended breach of the peace had ceased.

5. The order of the Ex-officio First Class Magistrate is, therefore, correct and there is no need, to interfere in revision with the said order. But the learned Advocate for the Petitioners drew my attention to the fact that the final order included T.S. No. 364 not mentioned either in the petition of the A party or in the preliminary order. This contention is well founded. The said item should therefore

be excluded from the scope of the final order and it is hereby excluded. Subject to this modification, the Criminal Revision Case is dismissed.