
(1915) 11 MAD CK 0004
In the Madras High Court

Velayudu Kone

APPELLANT

Vs

Narayana Kone and Others

RESPONDENT

Date of Decision : 19-11-1915

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145(4)

Citation : 31 Ind. Cas. 645 : (1915) 2 LW 1208

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Single Bench

Judgement

Kumaraswami Sastri, J.—The Magistrate after perusing the Police report passed an order on the 5th February 1915, holding that there was

a likelihood of breach of the peace and issued notice to the parties. On the 27th February 1915, the Magistrate without any evidence and without

any enquiry held that there was no likelihood of any breach of the peace. It is represented by petitioner's Vakil that his client was ready with

evidence to show that he was in possession and that he apprehended that he would be ousted by force. The mere fact that a prior application was

dropped by a Magistrate prior to the order passed by the Magistrate on the 5th February 1915, is no ground for refusing an inquiry. In spite of the

prior proceedings, the Police reported that there was a likelihood of breach of the peace and the Magistrate was of opinion that a breach of the

peace was likely.

2. Having come to that conclusion and having issued notice, the Magistrate ought to have held an enquiry as provided by Clause 4, Section 145, of

the Code of Criminal Procedure and examined witnesses called by both or either of the parties. His failure to do so, has been held to be illegal and

to afford grounds for interference by the High Court: Sreeman Kumara Tirumalraja Bahadur, Rajah of Karvetnagar v. Sowcar Lodd Govind Doss

Krishna Doss 5 Cri. L.J. 91, Gaizuddi Howladar v. Ainuddi Howladar 22 Ind. Cas. 431 : 15 Cri. L.J. 79 and Juthan Singh v. Ram Narain Singh

22 Ind. Cas. 986 : 18 C.W.N. 700 : 19 C.L.J. 356 : 15 Cri. L.J. 202.

2. I set aside the order of the lower Court and direct that he dispose of the petition according to law.