
(1988) 09 MAD CK 0029
In the Madras High Court
Case No : Criminal M.P. 8243 of 1985

Venkatakrishnan and Others	Vs	APPELLANT
State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 08-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 482

Citation : (1988) 09 MAD CK 0029

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : B. Sriramulu, for the Appellant; S. Sathiamurthi, T. Munirathna Naidu, for Public Prosecutor, for the Respondent

Judgement

1. This is a petition filed under S. 482 Cr.P.C. to quash the proceedings in M.C. 32 of 1984, on the file of the Revenue Divisional Officer and

Sub-Divisional Magistrate, Thiruthuraipoondi.

2. The Inspector of Police, Thiruthuraipoondi, laid a report before the Executive Magistrate that there is a dispute between the petitioners (A

party) and the counter petitioners (B party) respecting as to who is entitled to the possession of the property in Survey No. 64/5 measuring an

extent of 32 cents situate in Vezhur village, Thiruthuraipoondi Taluk. The Magistrate took the case on file as M.C. 32 of 1984 and after

considering the materials available on records passed an order prohibiting both the parties from entering into the property. This order was

challenged before the Sessions Court of East Thanjavur at Nagapattinam in Crl. R.C. 5 of 1985, which was also dismissed confirming the order of

the Executive Magistrate. The present petition is filed questioning the legality of the order of the Session Judge confirming the orders passed by the

Magistrate.

3. Learned counsel appearing for the petitioner would submit that the impugned order suffers from grave illegality of not deciding the party in

possession of the property. He would amplify the arguments by stating that it is incumbent upon the Magistrate to decide the question of

possession in favour of one or other of the parties in the proceedings under S. 145, Cr.P.C., and if he is unable to decide such question, he is to

act under S. 146, Cr.P.C., attaching the subject of dispute and appointing a Receiver. He has not even done this. In such a state of affairs he

would contend that the order passed by the Magistrate is totally without jurisdiction and therefore the same deserved to be quashed.

4. Learned counsel appearing for the respondents was unable to repel this argument of the learned counsel for the petitioners, except stating that it

was not possible for the Magistrate to decide the question of possession in favour of one of the parties. On a perusal of the provisions of Sections

145 and 146 Cr.P.C. I am perfectly satisfied that the order passed by the Magistrate prohibiting both the parties from entering into the property in

dispute is totally without jurisdiction calling for the setting aside of such order.

5. Learned counsel appearing for the respondent would submit that the proceeding under S. 482, Cr.P.C., is not permissible when especially a

specific provision has been made in the Act by way of a revision as against the order passed by the Magistrate under S. 145, Cr.P.C. No doubt

true, it is that the inherent power of the High Court under S. 482, Cr.P.C., is to be sparingly exercised to meet the ends of justice and should not

be resorted to in all cases, when there is specific provision in the Act itself for dealing with such matters.

6. Learned counsel for the petitioners would submit that the inherent power of the High Court under S. 482, Cr.P.C., is not whittled down or

taken away, merely because of the existence of specific provisions in the Code covering such cases. He would submit that when there is patent

illegality or total lack of jurisdiction in passing an order, the right and proper course to be adopted to set at naught the illegal order so passed is to

initiate proceedings under S. 482, Cr.P.C. for quashing the same. In support of his contention, he seeks to place reliance on the decision reported

in *Raj Kapoor and Others Vs. State and Others*, , wherein it is held as follows -

The inherent power of the High Court under S. 482 does not stand repelled when the revisional power under S. 397 overlaps. Nothing in the

Code not even S. 397 can affect the amplitude of the inherent power preserved in so many terms by the language of S. 482. Even so, when a

specific provision is made easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of

jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. There is no total ban on the exercise

of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. Then limitation is self-

restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting

in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if

glaring injustice stares the court in the face,

The decision cited above makes it crystal clear that the inherent power of the High Court is always there to set at right, if the glaring injustice stares

the court in the face, by quashing the orders which are manifestly illegal and suffers from want of jurisdiction. Affixing my seal of approval to the

contention of the learned counsel for the petitioner in this regard, I hold that the present petition is maintainable.

7. Learned counsel for the petitioners would also snatch an argument that invoking the jurisdiction under S. 145, Cr.P.C., is not permissible, when

the civil litigation between the parties is pending before the civil Court in respect of which proceedings are initiated under S. 145, Cr.P.C. No

doubt true it is that in the case on hand both the parties approached the civil court and got interim injunction in their favour prohibiting the other

party from entering into the property in dispute. These civil proceedings did not get terminated at all in the sense of passing of a decree by a

competent civil court. When the civil proceedings are pending, proceedings under S. 145, Cr.P.C., appeared to have been instituted. Proceedings

under S. 145 Cr.P.C. as well as the proceedings before the civil court can go simultaneously and there cannot be any legal bar at all. It is of course

true that once the civil court passed a decree in respect of the subject matter, the same is binding upon the Magistrate. If the civil court had passed

the decree prior to the initiation of proceedings under S. 145, Cr.P.C., then it may not be possible for the Magistrate to proceed under S. 145,

Cr.P.C., and decide the question of possession when especially the civil court has already decided such matter. The case on hand is not one where

the civil court had already adjudicated about the subject matter in dispute by passing a decree. In such a state of affairs, the learned counsel for the

petitioners would concede that there is no bar for the proceedings under S. 145, Cr.P.C.

8. In view of what has been stated above, it goes without saying that the petition deserves to be allowed and is therefore allowed by quashing the

proceedings in M.C. 32 of 1984 on the file of the Revenue Divisional Officer, and Sup-Divisional Magistrate. Thiruthuraipoondi.

9. Petition allowed.