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Date : 24/08/2025

P.C. Asraf and Another Vs V.P. Adulla and Another

Court: High Court Of Kerala

Date of Decision: March 18, 1987

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 133, 136, 141, 145, 145(1)
Penal Code, 1860 (IPC) â€" Section 188

Citation: (1987) KLJ 549

Hon'ble Judges: S. Padmanabhan, J

Bench: Single Bench

Advocate: G. Mohan and K. Moni, for the Appellant; P.A. Mohammed (T) and Public prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Padmanabhan, J.
B-parties in M. C. 46/78 on the file of the Sub Divisional Magistrate, Tellicherry seek to revise the final order in the

providing under S. 145 of the Code of Criminal Procedure. First respondent is A-party before the Magistrate and petitioners 1 and 2 B-parties. In

the first floor of a two storied building by the side of O. V. Road, Tellicherry A-party is conducting a Radio shop as tenant and in the ground floor

rooms B-parties are conducting textile shops. There was dispute between them on the question of displaying name boards in the parapet in front of

the building. A-party alleged that originally B-parties displayed their nameboards one foot below his name board, but subsequently changed the

nameboard and displayed it touching his nameboard and thereby caused obstruction of visibility to it.

2. A-party complained about this to the police and the police made a report to the Sub Divisional Magistrate on 19-12-1978. On the basis of that

if report the Magistrate initiated action under S.145 of the Code and issued a preliminary order. Both sides were required to put in their written

statements and they did so.

3. Jurisdiction of the Magistrate to take action under S. 145 was questioned. It appears that B-parties contended before the ""Magistrate that if at

all the proceeding is maintainable it is only under S. 147 and not under S. 145. That contention appears to be correct because the dispute between

the parties was regarding the extent of the right to display name board in, the parapet and not regarding possession. But the Magistrate -

unfortunately. rejected that contention and proceeded under S. 145itself even though S.,147(4) authorises proceedings, commenced under either

of the Sections to be converted, to one under the other Section. This is an irregularity committed by the. Magistrate because no proceedings under

S. 145 could have been had by him. After taking evidence the Magistrate found that B-parties carried cut alterations to their nameboard within two

months of the preliminary order. B-parties were directed to reduce the width of the board by one foot. They, were also directed to remove the

tubs light and shade fixed by them on the board. The direction was to do these things within 15 days and it was provided that in case of default the

order will be carried out through the Revenue Inspector with police help and the costs recovered from B-parties. They were also threatened with

penalty as. laid down under S, 188 of the Indian Penal Code. Such a penalty is provided under Ss. 136 and 141 of the Code of Criminal

Procedure dealing with the proceedings under S. 133. In such a case compliance with the order becomes necessary and the penalty is for

noncompliance. There is no corresponding provision for penalty under S. 188 of the Indian Penal Code in proceedings under S.145 or 147. In a

proceeding under S. 145 what is necessary, is only restoration of possession or prohibition from disturbance of possession, as the case may be,

until evicted in due course of law. Therefore the warning regarding penalty under S. 188 of the and an Penal Code is also not justified.

4. This revision petition happened to be dismissed on 12-4-1985 in the absence of the petitioners and counsel on the representation on behalf of

the first respondent that the parties settled their disputes out of court. By order dated 28-5-1985 it was restored to file on the application of the

petitioners under S. 482 of the Code of Criminal Procedure.

5. It is true that a dispute contemplated under S.145(1) concerning any land or water or the boundaries thereof includes buildings, crofts etc as

stated in sub-section (2). But the primary object of the proceeding under the provision is the prevention of the breach of the public peace arising in

respect of a dispute relating to immovable property. The Section appears in Chapter X relating to maintenance of public order and tranquilly which

is the main object of the provision even though it comes under the sub-heading D relating to disputes as to immovable property, the provision

relating to enquiry under sub-section (4) makes it clear that it is without reference to the merits or the claims of any of the parties to a right to

possess the subject matter of dispute. In order to achieve the object, the section only enables the Magistrate to settle the matter temporarily so far

as the criminal courts are concerned, and to maintain the status quo until the rights of the parties are decided by a competent court. The principle

underlying the section is that whether a person has the best or worst claim, he should not take the law into his own hands and disturb the public

peace which is most essential for normal life in an orderly society. The result may be to deprive the rightful owner of the possession temporarily and

to subject him to other inconveniences, but such considerations are necessarily subordinate to the imperative necessity of preserving the public

peace. Settling of private dispute, is not the purpose and object of the section because it is up to the parties to enforce their rights and approach

competent courts for that purpose and it is for the civil courts to settle the disputes. The object of S.145 is to see that such disputes do not disturb

the public peace affecting normal peaceful life in an orderly society.

6. Since the object of the section is not to authorise the Magistrate to settle disputes but only prevent breach of the peace he must be satisfied

before taking action that there is a dispute which is likely to cause a breach of the peace. Importance is not to the dispute but to the likelihood of

the breach of the peace consequent on the dispute. Therefore it is the imperative duty of the Magistrate to record in writing in clear and

unambiguous terms that a dispute likely to cause breach of the peace exists and also the grounds of himself being so satisfied. Even if the order

does not make it clear in so many words it must least appear otherwise from the order and the records that there were grounds for such

satisfaction and in fact the Magistrate applied his mind and had the requisite satisfaction.

7. In solving the dispute which is mainly and essentially for preventing the likely breach of peace the question to be decided is which of the parties

was in possession of the subject-.matter as on the date of the order under sub-section (1) of 145.. In such consideration a party who was wrongly

dispossessed within two months next before the date on which the police report or other information was received by the Magistrate or after that

date and before the date of the order under sub-section (1) will be treated as in possession on the date of the order. Such party will have to be

declared entitled to be in possession until evicted in due course of law and forbidding all disturbance of such possession until such eviction.

Possession could be restored to the party wrongly dispossessed as stated above. The Section does not give the power to the Magistrate to

investigate into the question of right to possession. Such questions are exclusively within the jurisdiction of the civil courts. Proviso to S. 145 (4)

itself has application only incases of forcible and wrongful dispossession.

8. It appears that all these legal principles were ignored by the Magistrate. Even though the words likelihood of the breach of peace'' are seen

mentioned in the order there is nothing else in the order or the records indicating that there was reasonable basis for such an apprehension. What

the Magistrate found in the order was that there was a vacant space of one foot in the parapet in between the name of boards of A-party and B-

parties and this space was also subsequently occupied by B-Parties by uplifting their board and placing shades and tube light. Magistrate found

that they were not entitled to do so and it amounted to dispossession of A-party from that space within two months prior to the order. From the

order there is nothing to indicate that A-party was in possession of that space prior to the order or that he was forcibly or wrongfully dispossessed

by the action of B-parties. In effect the Magistrate was actually deciding only the extend to which each party was entitled to place their

nameboards and the accessories which they could place on it. These are matters affecting the rights of the parties and no question of possession or

forcible or wrongful dispossession is involved. Evidently this is not a matter coming within the province of S. 145 enabling the Magistrate to take

action. No question of breach of peace was also involved. The Magistrate was only deciding a civil dispute between the parties which is

exclusively within the competence of the civil court. The order shows that it was intended as a final adjudication of the rights of the parties. Even

though the Magistrate had, resort to the proviso to S.145(4) he did not pass an order as envisaged in S.145 (6) declaring A-party to be entitled to

possession or restoring possession to him until evicted therefrom in due course of law and forbidding disturbance of such process until such

eviction. The order was intended as a final arrangement and B-parties were warned with penal consequences also. Evidently the order is beyond

the competence of the Magistrate and beyond the provisions of S.145.

The Criminal Revision Petition is allowed and the order of the Sub Divisional Magistrate is set aside.