

(1971) 09 AP CK 0001
Andhra Pradesh High Court
Case No: None

Damarowthu Apparao		APPELLANT
	Vs	
Gandepalli Simhachalam and Others		RESPONDENT

Date of Decision: Sept. 24, 1971

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 144, 435, 438

Citation: (1972) CriLJ 1126

Hon'ble Judges: A.D.V. Reddy, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

A.D.V. Reddy, J.

These petitions raise the question whether without having recourse to the provisions of Section 144(4) of the Criminal P.C. the provisions under Sections 435 and 438, Criminal P.C. can be resorted to,

2. One Damarowthu Apparao filed a petition before the Taluk Magistrate, Chodavaram seeking action u/s 144(4). Criminal P.C. alleging that the disputed land situated in Kin-thali Vallapuram bearing S, Nos. 357/1 and 358/2 was gifted to the Gram Pan-chavat on 28-8-1970 by its owner Sri Anapagaddi Surayya panthulu who had purchased the land under registered sale deed dated 17-5-1948, and the Gram Panchavat subsequently passed a resolution authorising the Zilla Parishad to construct a building for locating a family-planning sub-centre and for this construction, the tender of the petitioner was accepted and as the petitioner was collecting material for the said construction on the plot, the two respondents proclaiming that they would not allow anybody to construct any building thereon, threatened the petitioner saying that they would do away with his life if he should proceed with the work, that as the work had to be completed immediately according

to the terms of the contract and as there was every likelihood of disturbance of public tranquillity and danger to his life and as the circumstances do not admit of the serving in due time of a notice upon the respondents and as this was a case of emergency, immediate action should be taken u/s 144(4), Criminal P.C. After recording the sworn statement of the petitioner, without notice to the respondents, the Taluk Magistrate, relying on the sale deed, gift deed and other documents filed, held that though there was a rough patta in favour of the respondents that patta appears to have been issued on a false representation as already observed by him in the revenue enquiry and it had been issued by mistake, that their title to the land is not only doubtful but shady, that they have no business to interfere with the construction of the building in question, that the documents produced by the petitioner viz. the sale deed, gift deed, work order etc., show that he was lawfully employed for construction of the family planning sub-centre building. that his rights as well as of the Gram Panchayat have to be protected and a speedy remedy is called for and in that view passed an order directing the respondents not to enter into the schedule land and not to interfere in any manner with the construction of the family planning sub-centre.

3. The 1st respondent before the Taluk Magistrate, thereupon moved the Sessions Judge under Sections 435 and 438, Criminal P.C. and after enquiry the Sessions Judge has held that the Taluk Magistrate has imported some of his personal knowledge as Tahsildar in the Revenue enquiries held by him into this case, that the observations made by him have been made without any record in the present file, that he appears to have been anxious to support the petitioners and merely because the work had to be completed expeditiously to avoid lapse of funds he cannot pass an order of this type, that he has not considered the question of the actual possession of any party and there are no sufficient or justifiable grounds for passing that order and has recommended setting aside of that order, and this reference is Cr. R. C. 486/71. The petitioner before the Tahsildar has also filed Cr. R. C. 474/71 against the order of the Sessions Judge.

4. It is now contended that when Section 144(4), Criminal P.C. itself provides for a redress by way of an application to the same Magistrate who passed an order, or to a superior Magistrate, to rescind or alter the order passed, the party cannot have recourse to the proceedings under Sections 435 and 438, Criminal P.C. This contention is not tenable. No doubt u/s 144(4), Criminal P.C. any Magistrate may rescind or alter his own order or an order passed by his predecessor or of any Magistrate subordinate to him. This provision has obviously been made, as u/s 144(4), Criminal P.C. an ex parte order can be passed in case of an emergency or in case where the circumstances do not admit the serving in due time a notice to the person against whom the order is directed. This, no doubt, is a salutary provision, so that the party who has not been heard and who feels aggrieved can either approach the same Magistrate or a Magistrate to whom the Magistrate passing the order is a subordinate. But that does not mean that by reason of this provision the appellate

or revisional jurisdictions of superior Courts is taken away. This is a special jurisdiction conferred by a special provision in the statute, to enable the parties to approach the Court for a speedy redress of their grievances. The powers under Sections 435 and 438, Criminal P.C. are very wide, where-under the High Court or a Sessions Judge or a District Magistrate or Sub-Divisional Magistrate may call for and examine the records of any proceedings of any inferior Court within its jurisdiction and examine the correctness, legality or propriety of that order and in the case of the Sessions Judge or District Magistrate has to refer the matter to the High Court making its recommendations if any. Therefore the provisions of Section 144(4), Criminal P.C. cannot take away this right and merely because the party has not approached the court which passed the order or a superior Magistrate under that provision, it does not mean that the petition under Sections 435 and 438, Criminal P.C. to the District Magistrate is barred. This view has found favour in [Mahant Saturhan Das and Another Vs. Makhan Das and Others](#),; Pitchai v. Md. Atham. AIR 1932 Mad 720 and [Sankarsan Nath Vs. Sachidananda Das](#), Therefore this contention that the proceedings under Sections 435 and 438, Criminal P.C. are barred by reason of the provisions of Section 144(4), Criminal P.C. is not correct.

5. On the merits of the case, much need not be said, as obviously the Taluk Magistrate was in error in importing into the case his knowledge as a Tahsildar and also adjudicating on the validity of the title to the land in dispute and passing an order merely because there was an urgency in the funds sanctioned for the construction of the building being utilised within the financial year, as otherwise they would lapse. The order is patently erroneous and has to be set aside. The recommendation of the District Magistrate is therefore accepted and the order of the Taluk Magistrate will stand set aside.

6. In the result, the reference in Cri. R. C. 486 of 1971 is accepted and the revision Cr. R. C. 474 of 1971 filed by the petitioner (D. Apparao) is dismissed.