

Damarowthu Apparao Vs Gandepalli Simhachalam and Others

Court: Andhra Pradesh High Court

Date of Decision: Sept. 24, 1971

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” 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.