

PUBLIC  
PROSECUTOR  
v.  
PODIMONU  
BEARY.

violation of the contract at least at the place of delivery. If the accused wishes to contend that the disposal was not there, it is for him to show it. It is not a question of giving the benefit of the doubt to the accused. He has committed *prima facie* a violation of the contract at Mangalore by non-delivery. If he pleads that the violation was not at Mangalore, the onus of proving that rests upon him. I am not prepared to follow the Lahore ruling of a single Judge relied on by the lower Court. I hold therefore that the lower Court had jurisdiction to try the case.

I allow the appeal, reverse the acquittal and direct that the accused be now tried.

B.C.S.

---

## APPELLATE CRIMINAL.

*Before Mr. Justice Devadoss.*

R. SRINIVASA REDDY (PETITIONER), PETITIONER,

v.

M. DASARATHA RAMA REDDY (RESPONDENT),  
COUNTER-PETITIONER.\*

1928,  
March 15.

*Criminal Procedure Code (V of 1898), sec. 145—Application made in respect of forcible dispossession—Preliminary order not passed within two months—Applicant in no way responsible for the delay—If to operate to his prejudice—Intent and object of section.*

When an application is made to a Magistrate under section 145 of the Code of Criminal Procedure by a person complaining

---

\* Criminal Revision Case No. 963 of 1927.

of forcible dispossession, if, for no reason or fault of the applicant, the Magistrate is not able to pass a preliminary order within two months of the dispossession, the party complaining should not, on a proper construction of the first proviso to clause (4) of section 145, be made to suffer by reason of such delay on the part of the Magistrate, and is entitled to an order under that section.

SRINIVASA  
REDDY  
v.  
DASARATHA  
RAMA REDDY.

Though the words of the proviso are capable of the interpretation, that the dispossession must be within two months of the preliminary order, yet the intent and object of the section must be taken into consideration before such an interpretation is put upon it.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, paying the High Court to revise the order of the Court of Sub-Divisional Magistrate of Saidapet, dated 4th November 1927 in Miscellaneous Case No. 47 of 1927.

*V. L. Ethiraj* for petitioner.

*Muhammad Askar Ali* for respondent.

*Public Prosecutor* for the Crown.

### JUDGMENT.

The point raised in this case is that there was forcible dispossession, according to the petitioner on the 1st June 1927 and according to the Sub-Divisional Magistrate that there was dispossession early in May within two months of the presentation of his petition; but the Magistrate has found against the petitioner on the ground that the forcible dispossession was more than two months before the date of his preliminary order. He has not definitely found whether there was or there was not forcible dispossession. The counter-petitioner's title to the property was under a sale deed obtained by him on 31st May 1927. He could not have had possession before that. If the Magistrate finds there was forcible dispossession, then he would have to see whether

SRINIVASA  
REDDY  
v.  
DASARATHA  
RAMA REDDY.

the first proviso to clause (4) of section 145 is applicable to the case. The question he has to consider is this; when a person complains to the Magistrate of forcible dispossession, within a few days after the dispossession, and asks him to take proceedings under section 145, if the Magistrate either by reason of his sending the petition to the Police for enquiry or owing to pressure of work is not able to pass a preliminary order within two months, whether the opposite party should have the benefit of the delay caused in the Magistrate's Court. Though the words of the proviso are capable of the interpretation that the forcible dispossession must be within two months of the order yet the intent and the object of the section must be taken into consideration before a literal interpretation is put upon it. Where a person who is entitled to complain of forcible dispossession goes before a Magistrate and complains of forcible dispossession if for no reason or any fault of his, the Magistrate does not pass a preliminary order at once, but delays the passing of the order though it may be *bona fide* the person who complained to him of forcible dispossession should not be deprived of the benefit of section 145 by reason of the delay caused in the Magistrate's Court. I am supported in this view by my brother WALLACE, J., who in Criminal Revision Case No. 539 of 1926 observes: "I am not prepared at present to subscribe to the proposition that a party taking possession by force must be retained in possession if, owing to delay after the dispossessed party has asked the Court to take action, on the part of the Court taking action, over two months have elapsed before the Court finally makes up its mind to issue the preliminary order." I think a reasonable interpretation ought to be placed upon the proviso and not a literal interpretation which would defeat the very object of section 145 (4) which relates to

dispossession of immovable property. I set aside the order of the Magistrate and direct him to restore the application to file and dispose of it in the light of the observations made above.

SRINIVASA  
REDDY  
v.  
DASARATHA  
RAMA REDDY.

B.C.S.

---

APPELLATE CRIMINAL.

*Before Mr. Justice Ramesam*

VEDAPPAN SERVAI AND FOUR OTHERS  
(PETITIONERS), PETITIONERS,

1928,  
May 16.

v.

M. PERIANNAN SERVAI AND SIX OTHERS,  
(RESPONDENTS), COUNTER-PETITIONERS\*

*Criminal Procedure Code (V of 1898), sec. 144—Order under—  
Revision against, to High Court—If competent.*

An order of a Magistrate acting under section 144 of the Code of Criminal Procedure is not the order of a Court, and against such an order no revision lies to the High Court under section 435 of the Code.

*Nataraja Pillai v. Rangasami Pillai*, (1923) 17 L.W., 409, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the Order, dated 12th April 1928, of the Court of the Taluk First Class Magistrate of Tiruppattur (Ramnad District) in M.P. No. 145 of 1928.

*S. Swaminathan, P. N. Marthandam Pillai and A. Sri Rangachariar* for petitioners.

*K. S. Jayarama Ayyar* for respondents 1 and 2.

---

\* Criminal Revision Case No. 400 of 1928.