

APPELLATE CRIMINAL

Before Mr. Justice Pandrang Row.

MOOKA PANDARAM (RESPONDENT), PETITIONER,

1936,
September 1.

v.

SINNU MUTHIRIYAN (PETITIONER), RESPONDENT.*

Code of Criminal Procedure (Act V of 1898), sec. 144—Order of Sub-Magistrate under sub-sec. (1)—Confirmation of it by Sub-divisional Magistrate under sub-sec. (4)—Jurisdiction of District Magistrate to entertain another application under sub-sec. (4)—Power of District Magistrate to suspend order of Sub-Magistrate—Application to District Magistrate under sec. 144 (4)—Transfer to Sub-divisional Magistrate of—Power of.

Where a Sub-Magistrate passed a prohibitory order under section 144 (1) of the Code of Criminal Procedure and it was confirmed by the Sub-divisional Magistrate under section 144 (4), the power of the District Magistrate to entertain an application under section 144 (4) is not lost by reason of the fact that a Sub-divisional Magistrate who is subordinate to him had already dealt with an application made under that subsection to him.

The District Magistrate has no express or inherent power to suspend the order of the Sub-Magistrate. Section 144 permits any authority which has the power to rescind or alter an order to do so after hearing only the party who applies for it and this hearing can be completed without delay, and there is no particular reason why there should be a stay or suspension before such hearing.

When an application is made to the District Magistrate under section 144 (4) to alter or rescind the order of the Sub-Magistrate, the former must deal with it himself and cannot delegate his duty to a Sub-divisional Magistrate by transferring it to him.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying

* Criminal Revision Cases Nos. 607 and 608 of 1936.

MOOKA
PANDARAM
v.
SINNU
MUTHIRIYAN.

the High Court to revise the order of the District Magistrate of Trichinopoly—endorsement No. N. Dis. 1184/M. of 1936, dated 13th July 1936.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the order of the Court of the Sub-divisional Magistrate of Musiri in M.C. No. 45 of 1936, dated 10th August 1936.

K. S. Jayarama Ayyar and *G. Gopalaswami* for petitioner.

A. Narasimha Ayyar for respondent.

Public Prosecutor (L. H. Bewes) for the Crown.

ORDER.

These are applications which arise out of an order of the District Magistrate of Trichinopoly staying the order of the Sub-Magistrate of Turaiyur in M.C. No. 12 of 1936 pending the orders of the Sub-divisional Magistrate, Musiri, to whom the District Magistrate forwarded an application by one of the parties in M.C. No. 12 of 1936 under section 144 (4), Criminal Procedure Code. The Sub-Magistrate passed an order on the application of the present petitioner prohibiting the counter-petitioners from interfering with the performance of a certain festival by the petitioner. Some of the counter-petitioners applied to the Sub-divisional Magistrate of Musiri, under section 144 (4), Criminal Procedure Code, for rescinding the order and thereupon the Sub-divisional Magistrate after calling for the records passed an order confirming it except as regards counter-petitioners 1 to 6 in respect of whom the order was set aside apparently because they gave an undertaking before the Sub-divisional Magistrate that they

MOOKA
PANDARAM
v.
SINNU
MUTHIRIYAN

would not interfere with the conduct of the festival. It may be mentioned in this connection that these counter-petitioners 1 to 6 were not the petitioners before the Sub-divisional Magistrate. In other words, they did not seek any rescission of the original order of the Sub-Magistrate. Thereupon one of the counter-petitioners, viz., the respondent in these petitions by name Sinnu Muthiriyam, approached the District Magistrate with a petition under section 144, Criminal Procedure Code, pointing out certain alleged irregularities in the enquiry by the Sub-Magistrate and also his objections to the procedure followed by the Sub-divisional Magistrate and prayed that the order of the Sub-Magistrate should be rescinded altogether and that the order should be suspended pending disposal of the petition. The District Magistrate passed the following order on the application on the same date on which it was presented :

“Endorsement. (i) Forwarded to the Sub-divisional Magistrate, Musiri, for enquiry and disposal. (ii) The order of the Sub-Magistrate, Turaiyur, in M.C. No. 12 of 1936 is stayed pending orders of the Sub-divisional Magistrate after enquiry.”

This order which appears to deal with the petition presented under section 144 (4), Criminal Procedure Code, almost as if it were one relating to a purely administrative matter is objected to on three grounds, namely, (i) that the District Magistrate had no power to entertain an application to rescind the order of the Sub-Magistrate after a similar application for rescission had been made to the Sub-divisional Magistrate and the latter had passed orders thereon, (ii) that the District Magistrate had no power to suspend

MOOKA
PANDARAM
v.
SINNU
MUTHIRIYAN.

the order of the Sub-Magistrate temporarily pending the result of the enquiry ordered by him to be made by the Sub-divisional Magistrate and (iii) that the District Magistrate had no power to transfer the case to the Sub-divisional Magistrate for disposal.

I am of opinion that, as regards the power of the District Magistrate to entertain an application under section 144 (4), the power is not lost by reason of the fact that the Sub-divisional Magistrate who is subordinate to him had already dealt with an application made under that sub-section to him. The wide powers of rescission or alteration given by sub-section (4) to section 144 are necessary for the protection of the subject. They are invoked not when a Subordinate Magistrate declines to pass an order under sub-section (1) but only when an order is passed thereunder interfering with the rights of subjects, and where an order of this kind, that is to say, an order which interferes with or limits the rights of subjects, is passed, the law allows the Magistrate himself who passed the order to change his mind and rescind or alter the order and allows every Magistrate superior to that Magistrate to do the same thing if he thinks fit. These are provisions intended for the protection of the liberty of the subject and should be construed liberally; otherwise, the final authority in the district who is to determine whether there should be any interference with the liberty of the subject, and if so, to what extent, for the purpose of maintaining public tranquillity or preventing breaches of the peace, will be the Sub-divisional Magistrate, and the District Magistrate would be powerless to interfere with what he considers a needless exercise by a

Sub-Magistrate of the special powers given by section 144 (1), Criminal Procedure Code, if the Sub-divisional Magistrate has chosen to exercise his powers under sub-section (4). In the circumstances of this case, I am of opinion that the District Magistrate must be deemed to have had the power, if he thought fit, to rescind or alter the order of the Sub-Magistrate, the order of the Sub-divisional Magistrate being one which is in effect a confirmation of the Sub-Magistrate's order. The only alteration made in it was one which was of no consequence because the persons affected by the alteration were themselves prepared to abide by the order.

MOOKA
PANDARAM
v.
SINNU
MUTHIRAYAN.

As regards the other two questions raised in these petitions, viz., the power of the District Magistrate to suspend the order and the power to transfer, I am of opinion that the contentions of the petitioner are well founded. A general power to suspend orders of Subordinate Magistrates is not given to superior Magistrates expressly by the Code of Criminal Procedure, and that power is sought to be based by the Public Prosecutor on what is called the inherent power of the criminal Courts to pass such orders as are necessary in the interests of justice. The authorities on this point, viz., the existence of inherent powers in criminal Courts in the mofussal are not uniform and it would appear as if the weight of authority in this province is against the proposition that there is such an inherent power. Section 144 permits any authority which has the power to rescind or alter an order to do so after hearing only the party who applies for it and this hearing can be

MOOKA
PANDARAM
v.
SINNU
MUTHIRIYAN.

completed without delay, and there is no particular reason why there should be a stay or suspension before such hearing. It is not a case in which the other side has to be given notice and has to be heard. In all these cases under section 144 it is really the liberty of the subject that is affected by the original order and, though this interference might be made by the Magistrate at the instance of, or when moved by, some private individual, the superior authority can always rescind or alter the order without hearing the person at whose instance the original order was passed, the only limitation on his power being that he should hear the party who applies for rescission or alteration before declining to do so.

As regards the power of transfer, it has not been seriously argued by the Public Prosecutor that there is a power of transfer in a case of this kind. The authority that was invoked by the application to the District Magistrate was the authority to rescind or alter conferred by section 144 (4) and this authority cannot be delegated. It has been decided in Criminal Revision Case No. 318 of 1914 that the power of rescinding the order lies only with the Magistrate to whom the application is made and that the order of the District Magistrate to whom the application was made transferring the application to a Sub-divisional Magistrate is bad. The application made to the District Magistrate under section 144 (4), Criminal Procedure Code, cannot be brought either under section 192 or under section 528, Criminal Procedure Code, which deal with the subject of transfer of cases. In this particular case it would almost appear as if the learned District Magistrate dealt

with the application in an administrative way, and delegated his duty to the Sub-divisional Magistrate after suspending the order complained of. Moreover, the transfer to the very Sub-divisional Magistrate who had already dealt with an application relating to this very matter under the very same sub-section would not have been a proper exercise of the power of transfer, even if any such power really existed.

MOOKA
PANDARAM
v.
SINNU
MUTHIRIYAN.

The District Magistrate's orders suspending the order of the Sub-Magistrate and transferring the case to the Sub-divisional Magistrate must be therefore set aside, and the District Magistrate will have to deal with the application made to him, himself, according to law, and the proceedings now pending before the Sub-divisional Magistrate as a consequence of the order of the District Magistrate transferring the case to him must be quashed.

I wish to make it clear at the same time that it will be open to the District Magistrate to rescind or alter the order or to decline to do so as he thinks proper ; and nothing that has been said by me should be deemed to influence in any way his discretion which in a case of this kind has to be exercised for the protection of the rights of subjects consistently with the need for the preservation of the public tranquillity.

I direct further in the circumstances of the case that the cancellation of the order of suspension shall take effect only from the date immediately succeeding the date on which this order of the High Court is received by the District Magistrate.

V.V.C.