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Crl.O.P.No.16343 of 2022 and Crl.M.P.Nos.9425 and 9427 of 2022,  
Crl.O.P.No.16485 of 2022, Crl.O.P.No.16695 of 2022,  
and Crl.M.P.Nos.9799 and 9800 of 2022.

**THE HIGH COURT OF JUDICATURE AT MADRAS**

<b>Reserved on</b>	<b>Delivered on</b>
15~07~2022	20~07~2022

CORAM:  
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

**1. Crl.O.P.No.16343 of 2022 and  
Crl.M.P.Nos.9425 and 9427 of 2022,**

**2.Crl.O.P.No.16485 of 2022 and**

**3. Crl.O.P.No.16695 of 2022 and  
Crl.M.P.Nos.9799 and 9800 of 2022**

**Crl.O.P.Nos.16343 and 16695 of 2022**

Edappadi K. Palaniswamy M/a 67 years  
Interim General Secretary &  
Party Headquarters Secretary,  
All India Anna Dravida Munnetra Kazatam  
Puratchi Thalaivar MGR Maaligai  
226, Avvai Shanmugam Salai,  
Royapettah, Chennai 600014.

.. Petitioner

~Vs~

1. The Revenue Divisional Officer-cum-  
Sub-Divisional Magistrate,  
South Chennai Division,  
Chennai.



CrI.O.P.No.16343 of 2022 and CrI.M.P.Nos.9425 and 9427 of 2022,  
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and CrI.M.P.Nos.9799 and 9800 of 2022.

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2. The Inspector of Police,  
E-2, Royapettah Police Station  
Chennai 600014.

3. O. Panner Selvam  
145/70, South Agharaharam,  
Thenkarai  
Periyakulam  
Theni District.

.. Respondents

**Prayer in CrI.O.P.No.16343 of 2022:** Petition filed under Section 482 of Cr.P.C. to set aside the Proceedings of the 1<sup>st</sup> Respondent in R.C.No.B1/3269/2022 dated 11.07.2022 under Section 145 Cr.P.C.

**Prayer in CrI.O.P.No.16695 of 2022:** Petition filed under Section 482 of Cr.P.C. to set aside the Proceedings of the 1<sup>st</sup> Respondent in R.C.No.B1/3269/2022 dated 11.07.2022 under Section 146(1) Cr.P.C.

For Petitioner : Mr. Vijay Narayan  
[in both CrI.O.Ps.] Senior Counsel for  
Mr.E. Balamurugan and  
Mr. M. Mohamed Riyaz

For Respondents : Mr. E. Raj Thilak  
[in both CrI.O.Ps.] Additional Public Prosecutor [for R1 & R2]

Mr.P.H. Aravindh Pandian  
Senior Counsel for  
Mr.C. Thirumaran [for R3]



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**Crl.O.P.Nos.16485 of 2022**

Thiru.O. Panneerselvam  
Co-Ordinator/Treasurer, AIADMK,  
having office at No.226/275,  
Avvai Shanmugam Salai,  
Royapettah, Chennai 600014.

.. Petitioner

~Vs~

1. The Revenue Divisional Officer (south) /  
Sub-Divisional Magistrate, South Chennai.  
**(Proceedings vide RC No.B1/3269/2022).**

2. The Inspector of Police,  
E-2, Royapettah Police Station  
Chennai 600014.  
**(Cr.No.190/2022)**

3. Thiru.K.Palaniswamy  
Joint Co-Ordinator/Party Head Quarters Secretary, AIADMK  
having office at No.226/275,  
Avvai Shanmugam Salai,  
Royapettah, Chennai 600014.

.. Respondents

**Prayer in Crl.O.P.No.16485 of 2022:** Petition filed under Section 482 of Cr.P.C.to cll for the records in RC.No.B1/3269/2022 under Section 145 Cr.P.C. on the file of the Revenue Divisional Offier (South)/Sub-Divisional Magistrate, Chennai and set aside the Proceedings and hand over the possession of the office building of AIADMK party situatedat No.226/275, Avvai Shanmugam Salai,



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and Crl.M.P.Nos.9799 and 9800 of 2022.

Royapettah, Chennai 600014 to the Petitioner.

For Petitioner : Mr. A. Ramesh  
Senior Counsel for  
Mrs. P. Rajalakshmi

For Respondents : Mr. E. Raj Thilak  
Additional Public Prosecutor [for R1 & R2]

Mr. Vijay Narayan  
Senior Counsel for  
Mr.E. Balamurugan and  
Mr. Mohamed Riyaz

### **COMMON ORDER**

1.a. **Crl.O.P.No.16343 of 2022** has been filed to set aside the proceedings of the 1<sup>st</sup> Respondent in RC.No.B1/3269/2022 dated 11.07.2022 under Section 145 Cr.P.C.

1.b. **Crl.O.P.No.16695 of 2002** has been filed to set aside the proceedings of the 1<sup>st</sup> Respondent in RC.No.B1/3269/2022 dated 11.07.2022 under Section 146(1) Cr.P.C.

1.c. **Crl.O.P.No.16485 of 2022** has been filed to set aside the proceedings



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of the 1<sup>st</sup> Respondent in RC.No.B1/3269/2022 dated 11.07.2022 under Section 145 Cr.P.C. and to handover the possession of the office building of Anaithinthiya Anna Diravide Munnetra Kazhagam (hereinafter referred to as AIADMK) party, to the petitioner.

2. Crl.O.P.No.16343 of 2022 is filed by the former Chief Minister of Tamil Nadu Mr.Edappadi K. Palanisamy, claiming to be an Interim General Secretary of the AIADMK party. He referred as 'A' Party in the RDO proceedings. Crl.O.P.No.16485 of 2022 filed by Mr.O. Panneer Selvam, he was also former Chief Minister of Tamilnadu. He referred as 'B' Party. Since the disputes, issues, facts and circumstances involved in all the above three Crl.O.P.s are one and the same, all the three Crl.O.Ps are taken up for disposal by way of this Common Order.

3. The brief facts leading to filing these Crl.O.Ps as culled out from the petitions filed by 'A' party which are as follows: [The parties are referred herein as 'A' Party and 'B' Party, as referred in the impugned RDO Proceedings in



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RC.No.B1/3289/2022 dated 11.07.2022]

3.a It is the case of the 'A' Party that he is the Interim General Secretary of the AIADMK. The General Council of AIADMK has decided to make amendments, rules and regulations and wanted to have a single leadership, which was opposed by the 'B' party, who claimed dual leadership is the legitimate one. This lead to discussion and deliberation in the General Council Meeting held on 23.06.2022 and 11.07.2022. Challenging the General Council Meeting held on 23.06.2022, a supporter of 'B' Party one Mr. M.Shanmugam filed a suit in C.S.No.111 of 2022. The matter ultimately culminated into Apex Court. Honourable Apex Court permitted the General Council to go as per schedule fixed on 11.07.2022 as per law. Again 'B' Party has filed suit in C.S.No.118 of 2022 and O.A.No.368 of 2022 seeking for injunction restraining the conduct of the meeting on 11.07.2022. Learned single Judge has passed an order on 11.07.2022 9.00 a.m. rejecting the application. In the meanwhile, Mr.D. Jayakumar, Organising Secretary and Ex-Minister of AIADMK party given a representation on 08.07.2022 before the Chennai Police Commissioner for Police Protection at the



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party head quarters at Rayapettah, apprehending that there were attacks planned at the office headquarters when the General Council Meeting was supposed to take place. However, the police protection was not afforded and the police never acted on the complaint.

3.b It is further stated that due to the General Council held in a different place, the party headquarters was under lock and key and it was under the control of the Manager of the Party. When the matter stood thus on 11.07.2022 just before this Court pronounced the Order in O.A.368 of 2022 in C.S.No.118 of 2022, fearing that the order would be against 'B' party, 'B' party stormed into the Headquarters with its men. Most of them were not even party members. They stormed with stones, sickles and sticks and they broke open the door with deadly weapons and entered the premises and ransacked the premises. They have taken away some materials and looted several files from the office. It is the further case of 'A' party that every such Act was done with the active support of the police. Based on the report of the police, the 1<sup>st</sup> Respondent without making any enquiry, passed an Order dated 11.07.2022 under Section 145(1) Cr.P.C and also 146



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(1)Cr.P.C.attachng the property.

3.c Hence, it is the contention that the entire event was pre-meditated and orchestrated with police support. There is no dispute with regard to the ownership or possession of the premises. The property is owned by the AIADMK party and the party has been in possession of it. The property belongs to the AIADMK party, cannot be disputed upon by any other person. It is the contention that in a legally convened meeting, the 'B' Party has been removed as a primary member of the party. When the majority of the General Council members passed a resolution they cannot be made any dispute over the possession of the property. Hence, it is the contention that order passed under Section 145 and 146(1) Cr.P.C. By the 1<sup>st</sup> Respondent is *mala fide* and the same has been initiated in collusion with the police as there is no dispute with regard to the possession of the property. Section 145 and 146 Cf.P.C could be invoked only when there is a dispute with regard to the possession of the property.

4. It is also stated that before passing an order of attachment the Executive



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Magistrate must record her finding with record to the possession of the property.

In this case since no such finding was recorded, the order suffers from illegality.

It is also alleged that the entire so called law and order issue created due to the failure of the police to act quickly by providing necessary protection. Hence these applications are filed challenging the order passed under Sections 145 and 146(1) Cr.PC.

5. Plea of 'B' party in his petition CrI.O.P.No.16485 of 2022:

'B' Party also assailed the order of the 1<sup>st</sup> Respondent passed under Section 145 Cr.P.C.on the ground that there is non application of mind. However, it is relevant to note that the Order passed under Section 146(1) Cr.P.C. sealing the premises by the RDO has not been challenged by the 'B' Party. It is the case of the 'B' Party that he is the Coordinator and 'A' Party is the Joint Coordinator of the of the AIADMK party. It is the contention that the Coordinator and Joint Coordinator posts were created after the demise of the former General Secretary and former Chief Minister Dr.J. Jayalalitha. After creation of the posts of



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Coordinator and Joint Coordinator bye-laws were amended on 12.09.2017. As per rule 45 of the Bye-laws the Coordinator and Joint Coordinator are fully authorised to relax or make alternations to any of the Rules and Regulations of the party. It is also stated that the tenure of the post is five years as per Rule 20A(3). Communication also sent to the Election Commission in this regard on 01.12.2021.

6. When the matter stood thus, by a notice of invitation dated 02.06.2022, 'A' party had invited the 'B' Party to attend the General Council Meeting to be held on 23.06.2022. On 14.06.2022, there was a meeting of District Secretaries held in the party headquarters, by way of a press meet given by the Party Organiser D.Jayakumar. 'B' Party came to know that a new demand was raised by demanding that the party should be governed by a single leadership. Such a demand created turmoil in the party and party cadres have become restless and divided in their opinion. However, with regard to the single leadership of the party 'A' Party intended to introduce an agenda in the General Council meeting on 23.06.2022. A Civil Suit was filed by Mr.Shanmugam, one of the General



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Council Members, seeking interim injunction restraining 'A' party in placing any agenda in the General Council Meeting to be held on 23.06.2022 and the single Judge of this Court rejected the relief prayed for and permitted to conduct the General Council Meeting.

7. As against the Order of single Judge, O.S.A.No.160 of 2022 was filed. However, the Division Bench passed an Order allowing to convene the General Council Meeting and held that decision could be taken only with regard to 23 items mentioned in the draft resolution. However, contrary to the above orders Presidium Chairman was appointed in the said General Council and the said Presidium Chairman announced in the General Council calling for 11.07.2022, According to him it is against Rule 20A(v) of the Bye-laws of the party and contrary to law. Hence he preferred an application in O.A.Nos.368, 370 and 379 of 2022 in C.S.No.118 and 119 of 2022 seeking for grant of order of ad-interim injunction. The Single Judge, however, rejected the application and permitted the General Council Meeting scheduled to be held on 11.07.2022 in accordance with law. Hence, it is the contention that the order of the Single Judge does not become



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final and it is subject matter to appeal. Hence, it is his contention that 'B' Party are in charge and possession of the party building. It is the contention of the 'B' party that the contention of the 'A' party that he is the General Secretary of the party has to be tested before the Civil court. According to 'B' party when they were in-charge and in possession of the party building, they were asked to vacate the premises and they were received the proceedings from the 1<sup>st</sup> Respondent stating that an enquiry under Section 145 Cr.P.C.in connection with the dispute over the possession of the building No.275 initiated on the basis of the FIR in Cr.No.190 of 2022 had been registered in E-2 Royapettah Police Station on 11.07.2022. It is the contention that B party having been in physical possession and continuing to be so, the premises on 11.07.2022. Therefore, sealing of the premises by the 1<sup>st</sup> Respondent is not according to law.

8. Though the ultimate object of Section 145 Cr.P.C.is not only to maintain the party in possession and force the other party to go to the Court of competent jurisdiction, it is also for preventing any breach of peace in the locality. According to them there is no dispute over possession they are in possession on



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11.07.2022. Hence, the order passed by the RDO is illegal and passed with non application of mind. 'B' Party has every legal right to enter upon the party headquarters building. Therefore, seeks to set aside the order of the 1<sup>st</sup> Respondent and to hand over the possession of the office building of AIADMK Party to the 'B' Party.

9.a The 1<sup>st</sup> Respondent filed counter wherein it is stated that on the basis of the Report forwarded by the Inspector of Police, E-2, Royapettah Police Station, on 11.07.2022 at 10.30 a.m. along with FIR in Cr.No.190 of 2022 for the offences under u/s 147, 148, 341, 324, 336, 353 and Section 3 of the TNPPDL Act, finding that violence has erupted among two factions outside the AIADMK headquarters due to intra party dispute between 'A' Party and 'B' Party. From the photographs and videographs it was seen that there was a dispute regarding party headquarters and more than approximately 200 men of both 'A' Party and 'B' party were gathered outside the AIADMK party office and attacked each other and created violence. After perusal of the Photographs and Videographs she passed an order on the line that the violence and feud of both 'A' and 'B' parties would spread



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across the State, to contain the situation immediately order was passed under Section 145 Cr.P.C. She issued summons to both 'A' and 'B' parties to appear in person or by pleader on 25.07.2022. It is also stated that considering the breach of peace and the emergent situation of law and order in that locality and the continuing dispute over the possession of the disputed building between 'A' and 'B' parties, he had passed an order under 146(1) Cr.P.C. to contain the violence. She has also passed an order of attachment and directed to lock and seal the premises.

9.b. It is the contention that none of the civil litigations are pending to the AIADMK Party Headquarters and the dispute over the possession of the building arose on 11.07.2022. Therefore Order passed is in accordance with law. It is her contention that since the AIADMK Headquarters situate in Centre of City and it is surrounded by Schools, Commercial Complex, Residential Apartments, Shops etc., such order came to be passed. It is also denied that Police have colluded with 'B' party and stated that the possession of both 'A' and 'B' parties cannot be decided under Section 482 of Cr.P.C.



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10.a. Learned Senior Advocate Mr. Vijay Narayan appearing for 'A' Party vehemently submitted that the Order passed by the 1<sup>st</sup> Respondent suffers from illegality and there is non-application of mind. The Order itself indicate that there is a dispute as to two faction of the political party. Therefore, when there is no dispute between the possession of any immovable property mere alleged dispute between two faction of the political party may not invite the order under Section 145 of Cr.P.C. It is his contention that the entire violence has been orchestrated with the active support of the police by the 'B' Party, he has barged into the premises just before the learned Single Judge of this Court was about to deliver the judgment in O.A.Nos.368, 370 and 379 of 2022 in C.S.No.118 and 119 of 2022.

10.b It is the contention that previously the posts of Coordinator and Joint Coordinator was created in an Executive Committee Meeting held on 01.12.2021. However, the same was not ratified. Previously an attempt has been made to stall the General Council fixing the single leadership in the party which went upto the Supreme Court. The Apex Court in SLP (c) No.11237 of 2022 stayed the



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Division Bench Order and also held that General Council of the Respondent No.3, slated to be held on 11.07.2022 is concerned, the same may proceed in accordance with law. Even after the said order suit has been filed in C.S.No.118 and 119 of 2022 by the 'B' Party and an interim injunction was sought. Orders were reserved and Judgment was to be pronounced at 9.00 a.m. on 11.07.2022 when the General Council was scheduled, anticipating the order going against 'B' Party, instead of attending the General Council 'B' Party has barged into party office with hooligans. Hence his submission is that the entire violation has been orchestrated by the 'B' Party, which has been telecasted in all the media and the police were mere spectators. Therefore, mere barging into the premises by unleashing the violence one cannot claim that he is in possession of the property. It is his contention that in the photographs and videographs filed by the Respondent before this Court itself indicate that how the party headquarters door has been broke open with violence and 'B' party entered on that date. Therefore, his contention is that, act of 'B' Party was nothing but an act of trespass just for the sake of creating law and order problem, he cannot claim that he is in possession of the property. The 1<sup>st</sup> Respondent passed orders hurriedly without any materials.



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10.c The Order passed under Section 145 Cr.P.C. indicates that it is the dispute between the factions of the political party. Therefore, his contention is that dispute between two factions of the political party can not be equated as to the immovable property. It is his further contention that even in the FIR said to have relied upon by the RDO, does not contain anything with regard to the dispute related to the immovable property or related to possession of the property. Under such circumstances invoking 145 Cr.P.C. Proceedings by the Executive Magistrate is an abuse of process of law and the very order passed by the Executive Magistrate shows the non-application of mind. The impugned order does not speak about the existence of any breach of peace related to the AIADMK headquarters. Whereas it is only indicated that it is a dispute between two factions of a political party. Hence according to him the so called dispute between 2 factions of a political party cannot be adjudicated by the Executive Magistrate. The 1<sup>st</sup> Respondent is a coram non judice to adjudicate the dispute between two factions of a political party. The impugned order nowhere speaks about the dispute regarding the possession of the property. Therefore, orders passed under Section



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145 and 146(1) Cr.P.C.suffers from non application of mind. Even it is the admitted case of the 1<sup>st</sup> Respondent that 'B' party has barged into the premises just before the Single Judge delivered the Order, Respondent police ought to have registered a case for trespass, house breaking and theft of articles from the premises on the trespassers. Therefore sealing of the headquarters of the prime opposite party of the State strike the very democratic set up, it will amount to oppression of the opposition party. Proceedings under Section 145 and 146(1) Cr.P.C. passed indicate clear non-application of mind and substantive contention of the 'A' Party is that the Order has been passed in collusion with the police and State machineries.

10.d It is also submitted by the learned Senior Counsel that the majority of the General Council Members adopted the resolution for Single Leadership in the party. 'B' Party has already been expelled from the primary membership of the Party, which was also communicated to the Election Commission of India. As per the Bye-laws of the Party, General Secretary or any other person authorised by him is incharge of the headquarters. It is his contention that on 08.07.2022 the



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Organisation Secretary gave a representation to the police to give bundobast.

However, the police have failed to act on that complaint. The complaint itself indicates that only 'A' party was in possession of the headquarters office. Therefore, Order passed under Section 145 and 146(1) Cr.P.C. Suffers from illegality and liable to be set aside.

10.e In support of his contention Mr. Vijay Narayanan, learned Senior Counsel he relied upon the judgments of the Apex Court:

- 1. Ashok Kumar vs. State of Uttarakhand and others*  
**[(2013) 3 SCC 366]**
- 2. Janaki Ramachandran and Others vs.State [1988*  
**SCC Online Mad 489]**

11.a Whereas the learned Senior Counsels Mr.A. Ramesh and Mr.P.H. Aravindh Pandian have submitted that Civil Suits are filed as against the General Council Meeting, with regard to possession of headquarters no suit is pending nor rights have been decided. 'B' party was one of the Coordinators. Therefore, he has every right to enter the office. Admittedly, he has been in the headquarters



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office on 11.07.2022. In such a view of the matter he cannot be thrown out.

Mr.A. Ramesh learned Senior Counsel pointed out that Order passed under Section 145 suffers from non application of mind since the order indicate that as if the violence lead to other part of the country is without any materials. Since the Executive Magistrate has found that there was a breach of peace and lead to serious threat to law and order and breach of peace and tranquility in the locality. Attachment order cannot be lifted. However,it is his main contention that the possession cannot be decided by the RDO and only competent civil court alone can go into the issue. It is also stated that the violence has been unleashed by the 'A' Party.

11.b. The allegation that 'B' Party has unleashed the violence is an after thought. As the office bearer of the political party 'B' party is entitled to enter the office. That cannot be found fault with. Therefore, his contention that the Petition seeking to set aside the order passed under Section 145 Cr.P.C.is maintainable. However, possession cannot be decided in which exercising power under Section 482 of Cr.P.C. Only after proper evidence before the R.D.O.final order could be



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passed. As far as the order passed under Section 145 Cr.P.C., it is only an opinion formed by R.D.O.without any materials. Though Order under Section 145 suffers from non application of mind since the breach is likely to cause, continue to exist, the order for attachment passed by her is correct and cannot be impugned in these proceedings.

11.c In support of their contention they relied upon the following judgments:

1. *Jhummal @ Devandas vs. State of Madhya Pradesh and Others [(1988) 4 SCC 452]*
2. *Prakash Chand Sachdeva vs. State and Other [(1994) 1 SCC 471]*
3. *State rep.by Deputy Superintendent of Police vs. S. Kannan & Others [2015 SCC Online Mad 14163]*
4. *R.H.Bhutani vs. Mis Mani J. Desaid & others [AIR 1968 SC 1444]*



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and CrI.M.P.Nos.9799 and 9800 of 2022.

5. *Gabrial Thankayan and Another vs. Narayanan Nadar Perumal nadar and others [1977 SCC Online Ker 169]*
6. *Dharmendra Rajput vs. State of U.P.and others [2010 SCC Online All 2020]*
7. *Narayana Asari and others vs. Kandasami Asari [CrI.R.C.No.468 of 1914 Madras High Court (Mar 26, 1915)]*
8. *N.A. Ansari vs. Jackiriya and Ors. [Madr High Court (Oct.6, 1989)]*
9. *Pakkiammal vs. Revenue Divisional Officer cum Executive Magistrate and Others [Madras High Court (Jul 3, 2013)]*

12.a Mr.E. Raj Thilak, learned Additional Public Prosecutor has vehemently submitted that on 11.07.2022 when the General Council of the AIADMK party was held in different place. Supporters of the 'A' Party consisting



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of 200 people and 'B' Party above 200 people gathered in front of the AIADMK Party office and attacked each other by pelting stones, sticks and indulged in violence. Despite the efforts put by the police, the violence could not be contained and immediately on the basis of the FIR registered in Cr.No.190 of 2022 and after the report sent by the Police to RDO, the RDO has passed an Order after verifying the FIR, photographs, videographs. His contention is that the Videograph, Photographs produced before this Court itself indicate that how the public tranquility has been affected and created panic among the residents of that area and general public. Due to such activity all the shops, schools in the near vicinity were closed and the shopkeepers left from the place. According to him every efforts have been taken to control the violence. The Executive Magistrate has passed an order on subjective satisfaction of the materials and after going through the FIR, videographs and photographs. It is his contention that 'B' party proceeded to the subject building at 8.45 a.m. alongwith his supporters through music academy junction and despite the police intervention and request made not to proceed further as opposition group is also gathered, he did not heed to that and proceeded with his supporters. When the Court has asked to file a report in this



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regard, the next day status report filed by the Inspector of Police, wherein the submissions made by the learned Additional Public Prosecutor on the previous day consciously missed out.

12.b Be that as it may. It is the contention that despite the large number of police personnel present from morning 6.00 a.m., they could not control both groups involved in violence, which caused breach of peace panic among the locals, two schools were closed on that date and due to fear all the shops in that area also closed. Learned Additional Public Prosecutor has also played video footage stated to have taken by the police before this Court, also filed the photographs and vehemently submitted that since there is no civil litigation pertaining to the possession of the property as on date the passing of order under Section 145 and 146(1) Cr.P.C. are well founded. He denied the allegation that the police was merely spectators and colluded with 'B' party. It is his contention that despite the protection given to the headquarters office both group gathered and indulged violence. Therefore, submitted that FIRs in Cr.Nos.191 and 192 of 2022 were also registered later. According to him 55 people of both sides have been



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injured and 2 police persons also sustained injuries. He has also stated that pucca bundobust was provided to the party office round the clock from 05.07.2022 to 11.07.2022. There were no untoward incident happened from 05.07.2022 till 11.07.2022. Hence opposed all the petitions.

12.c In support of his contention he relied upon the following judgments of the Honourable Apex Court and this Court:

1. *Rajpati vs. Bachan and Another [(1980) 4 SCC 116]*
2. *A.Dhaeethu vs. District Collector, Sivagangai Dist. [(2016) 2 MLJ (CrI.) 641 (FB)]*
3. *Ram Sumer Puri Mahant vs. State of U.P. and others [(1985) 1 SCC 427]*
4. *Mohammed Mydeen vs. The Sub Divisional Magistrate cum Deputy Collector, Tirunelveli. [W.P.(MD) No.13998 of 2020 dated 04.03.2022 Madurai Bench of Madras High Court]*



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13. Before going to the merits of the proceedings under Section 145 and 146(1) of Cr.P.C., this Court is of the view that what has led to such situation is also to be recorded for proper appreciation and adjudication.

14. Both 'A' Party (Edappadi K. Palanisamy) and 'B' Party (O.Panneerselvam) are former Chief Ministers of Tamil Nadu State. It appears that there is tussle in respect of General Council Meeting and certain amendments. Though these factors may not be relevant for testing the Order passed under Sections 145 and 146(1) Cr.P.C., but relevant to assess the back ground on which the Orders under Section 145 and 146(1) Cr.P.C.came to be passed. This Court is also conscious of the fact that the Court while testing the Orders under Section 145 and 146(1) Cr.P.C., cannot go beyond the scope of provision and the facts obtained to the above proceedings.

15. It is the admitted case of 'A' and 'B' Parties that there was simmering dispute over single leadership in the party. Both 'A' and 'B' were held Chief Ministerial post in the State of Tamil Nadu. They were appointed as Coordinator



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and Joint Coordinator by the Executive Council meeting held on 01.12.2021.

According to the 'A' Party Executive Council Meeting was not ratified in the General Council held on 23.06.2022. Therefore, the Coordinator and Joint Coordinator post become vacant. With the majority members in favour of the single leadership, a meeting was scheduled on 23.06.2022 which was challenged before the Single Judge of this Court for seeking interim injunction. The Single Judge has rejected the injunction and allowed the meeting to go on. The order also challenged before the Division Bench of this Court. The Division Bench also allowed the Meeting to go. However put a cap that except 23 agenda no other new agenda will be introduced and the General Council is permitted to discuss any other matter but no decision to be taken. The same was challenged before the Honourable Supreme Court in SLP (C) No.11237 of 2022. The Honourable Apex court vide its order dated 06.07.2022 while staying the Order of the Division Bench also held that the meeting slated to be held on 11.07.2022 is concerned, the same may proceed in accordance with law and held that in that relation, the other aspects of any interim relief ought to be projected and presented before the learned Single Judge dealing with civil suit(s) on the Original Side.



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16. Again, another suit has been filed in O.S.No.118 and 119 of 2022 seeking grant of injunction for the conduct of the meeting on 11.07.2022. After hearing the arguments this Court has passed an Order at 9.00 a.m. on 11.07.2022 when the meeting was fixed on the same day little later. This Court dismissed the application specifically holding that, in the matters of internal affairs of party/association, the courts normally do not interfere, leaving it open to the party/association and its members to frame a particular bye-law, rule or regulation which may provide better management of the party/association and solution for sorting out any issues and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said party/association. It is also held that the authority to frame, amend, vary and rescind the bye-laws of the party, undoubtedly, vests in the General Council of the Party. It is further held that when the majority plays a vital role in the decision making process, this Court cannot interfere with the internal affairs of the party.

17. It appears that various resolutions were taken on the same meeting on



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11.07.2022 as per the typed set annexed before this court. One such important resolution was Single Leadership was adopted by majority members in creating the Interim General Secretary. It is also stated around 2432 members of the General Council supported the resolution followed by a resolution, 'B' Party was expelled from the AIADMK Party. It is relevant to note that having approached the Court to seek an injunction to stall the General Council Meeting in twice, 'B' Party had knowledge that he may not get majority in General Council. Instead of participating the General Council Meeting he has proceeded towards the party headquarters with his supporters and also escorting security persons normally given to the Ex-Chief Ministers. The videographs produced by the police also seen by this Court. On perusal of the videographs this Court is of the firm view that it not reflect the entire events. But the videograph indicate some stone throwing and violence activities of both sides.

18. The photographs produced by the police would disclose the fact that 'B' party was marching towards the headquarters office in a propaganda van surrounded by his followers armed with sticks and stones. It is also relevant to



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note that from the photographs this Court could see the fact that while 'B' party was proceeding to party office with the escorts along with supporters, the supporters were carrying deadly weapons and throwing the stones and they barged into the headquarters office which is subject matter of the proceedings of the 1<sup>st</sup> Respondent. The doors were broken and they gained entry inside the party office. When the resolution was about to be passed, having filed a suit to stall the General Council Meeting, in all fairness the 'B' party referred as Mr.O. Panneerselvam ought not to have resorted to enter party office with his supporters, particularly they were carrying weapons and unleashed the violence.

19. Though it is submitted by the learned Additional Public Prosecutor fairly in the first date of hearing that despite the police requested the former Chief Minister Thiru. O.Panneer Selvam, not to proceed further as there are likelihood of violence, he did not heed the advise of the police and proceeded. Such a statement never reflected in the Status Report filed by the Police later for the reasons best known to them. From the Status Report of the Police it is not disputed by them that the complaint was given by the Organising Secretary of 'A'



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Party to give a proper police bandhobust to the headquarters. It is stated that they have given necessary bandobust. The police were on the round the clock vigil near the party office. The Status Report also indicates that morning 6.00 a.m. itself supporters of 'A' Party were present. In this regard this Court summoned General Diary from the concerned police station, on perusal, the same disclose the fact that only at 8.05 a.m. 80 police personnel were sent to AIADMK office headquarters. The very entry in the General Diary is contrary to the statements in status report of the Inspector before this Court, that at 6.30 a.m. police were present and people also gathered. Admittedly, on the day due to the General Council election the office was closed by the office bearers of the office. Therefore, allowing such gatherings in front of the office at 6.00 a.m. should have been contained by the Police. The Videographs produced by police itself indicate that they have not taken serious action till 'B' party reached to the office. Thereafter only they appears to have used minimum lathi charge to disperse the crowd. Before that they were not taken any serious steps to disperse any crowd.



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20. On 08.07.2022 as per records a complaint has been given by the 'A' Party that they are in possession of the property and sought police protection. The status Report filed by the Police also shows tht they received a complaint on 22.06.2022 from 'A' Party fearing that some anti social elements are trying to enter AIADMK headquarters. According to the police round the clock vigil was given from 05.07.2022 till 11.07.2022 and there was no untoward incident reported. The Status Report which has filed omitting the statement of the learned Additional Public Prosecutor before this Court indicate that only 'A' Party was in possession of the property till 11.07.2022.

21. Status Report also shows that 6.30 a.m. itself supporters of 'A' Party around 300 in numbers were assembled in front of the party office to prevent the 'B' Party entering into the office. It is relevant to note that as per entries made in General Diary police personnel were sent to AIADMK office only at 08.05 a.m. It is relevant to note that according to the police 'B' Party has proceeded to the office only at 8.15 a.m. Even accepting the version of the police that at 6.30 a.m.there were many cadre of 'A' Party present to prevent 'B' Party. Police were very much



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aware that if 'B' Party are allowed, there would be a law and order problem. But they have not taken serious steps to disperse the crowd. Only after the violence unleashed after the arrival of 'B' Party along with his supporters, who broke open the office and ransacked the premises, police came into action and filed an FIR in Cr.No.190 of 2022.

22. Be that as it may. 'A' Party being the responsible person and he has stated to have taken democratic stand of calling the General Council Meeting ought not to have allowed their cadres in front of the office on the same day. This aspect also clearly show that both leaders have not bothered about the law and order problem. In fact, 'A' Party also shoould have taken steps atleast to instruct the cadres not to gather in front of the office.

23. Be that as it may. The fact remains that as per the Report of the Police, the police has acted swiftly. If the police has acted promptly the so called incident of violence could have been avoided. The persons entering into the premises with supporters with police escorts is not an ordinary person. He held the Chief



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Ministerial Post in the State. His conduct in entering into the premises in the last minute anticipating that 'B' party may not get any support in the General Council, created a warlike situation which led to violence. It is to be noted that admittedly various resolutions have been passed in the General Council. Unless those resolutions held to be invalid by the competent Civil Court, the majority decision of the General Council will prevail over. Till such decision is nullified by any court of law, the decision will be binding on the parties who were governed by bye-law whether they are 'A' Party or 'B' Party. It is also now stated that 'B' Party has been expelled from the very party itself. Such a situation if any member of an association is expelled from the association or the party whether he can claim absolute right or possession over the building of the Association, is the question to be looked into.

24. With the above back ground, now, this Court proceed further to decide whether the order passed by the 1<sup>st</sup> Respondent is in accordance with law.

25. On perusal of the impugned proceedings the 1<sup>st</sup> Respondent passed an



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Order which is as follows:

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**“Proceedings of the Revenue Divisional Officer (South)/ Bub Divisional Magistrate, South Channel**

**Present: Selvi. K.Sai Vardini, B.E.,**

**R.C.No.** B1/3269/2022

Dated 11.07.2022

Sub:CrPC 145 - Request received from E2 Royapettah Inspector of Police regarding Law and Order issue between 2 factions of AIADMK at Party Headquarters, Royapettah, Chennai-Orders issued.

Ref: Request letter of Inspector of Police, 12 Royapettah Police Station dated 11.07.2022.

**Order:**

I have perused the FIR in E2 Royapettah Cr.No. 190 of 2022 u/s 147, 148, 341, 324, 336, 353 IPC r/w 2 of TNPPDL Act forwarded by Inspector of Police, E2 Royapettah Police Station. It is seen from the contents of the FIR that it is a dispute between two factions of a political party with regard to possession of the building in question.

I have perused the PIR, as well as the photographs and videographs produced by the Inspector of Police, E2, Royapettah Police Station and from the perusal of the above, I am satisfied that there is an imminent possibility of breach of peace, tranquillity and law and order issue.

The Building in question is located in a densely populated residential cum commercial area of central part of Chennai City. If no concrete action is taken, this dispute will lead to serious threat to law and order, as well as end in breach of peace and tranquillity.

I am also satisfied that if this feud is not contained immediately, there is a likelihood of the issue spreading over to various parts of the State. In view of the above circumstances, I hereby order both the parties (A and B parties) mentioned below to attend in person or by a pleader on 25.07.2022, at the office of the Revenue Divisional Officer, South Division, Guindy, Chennai. On appearance, the parties are entitled to put their written statements and let in evidence to show, which of the party is in possession of the subject of the building as on 11.07.2022.

A-Party

B-Party



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Thiru Edappadi K. Palaniswamy  
AIADMK and his 200 supporters

Thiru O. Panneerselvam AIADMK  
and his 200 supporters.

Revenue Divisional Officer/  
Sub-DivisionalMagistrate Chennai.”

26. It is stated in the above order that it is the dispute between two factions of a political party with regard to possession of the building in question and it is also stated that if no concrete action is taken, this dispute will lead to serious threat to law and order. The basis for passing the order is an FIR filed in Cr.No.190 of 2022. The crux of the FIR is as follows:

*“While the police are in the patrol in front of the AIADMK party office at 7.00 a.m. there were 200 people of 'A' party gathered. At that time at about 8.45 a.m. Thiru O.Panneer Selvam came to the office along with 200 people. Therefore, a scuffle started between two groups and created panic. Thereby FIR in Cr.No.190 of 2022 was registered under Section 147, 148, 341, 324, 336, 353 of IPC and Section 3 of TNPPDL Act. “*

FIR never indicated the actual dispute of capturing the office. Even assuming that the same with regard to the possession of the property it is relevant to extract the provision of 145 Cr.P.C. :-



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***“145. Procedure where dispute concerning land or water is likely to cause breach of peace.***

*(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.”*

27. Close analysing of Section 145 Cr.P.C. Shows that the Magistrate is empowered to try a proceedings under sub-Section (1) of Section 145 Cr.P.C. If he is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction. Further it shows that on receipt of the above information the Magistrate shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in



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such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. Mere some information for the purpose of drawing the proceedings is not material. What is material is that the Executive Magistrate must be satisfied about the existence of the dispute as envisaged in Section 145(1) and assigned the grounds of his being so satisfied. The dispute must be related to the land, water or boundary thereof the dispute must be such which is likely to cause breach of peace. The Order impugned disclose that the Magistrate has formed opinion based on the FIR. Since the dispute between two faction of a political party. The dispute does not specifically indicate that the altercation is with regard to the possession of the properties.

28. In the counter filed by the Respondent it is stated that violence has erupted among two factions outside the AIADMK headquarters due to intra property dispute with regard to the 'A' Party and 'B' Party namely Tr.K.Edappadi Palanisway, AIADMK and his 200 supporters and Tr.O.Panneerselvam, AIADMK and his 200 supporters respectively. After going though the FIR as well



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as Photographs and Videograph, she has come to the conclusion that there was a dispute regarding party Head Quarters more than approximately 200 men of both 'A' Party and 'B' Party were gathered outside the AIADMK party office and attacked each other and created violence. The counter filed by the 1<sup>st</sup> Respondent indicated that two factions fought outside the head quarters office not inside the building. It is relevant to note that the Apex Court in *Ashok Kumar vs. State of Uttarakhand [(2013) 3 SCC 366]* has held as follows:

*“The object of Section 145 Cr.P.C. Is merely to maintain law and order to prevent breach of peace by maintaining one or other of the parties in possession and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute. If after the enquiry under Section 145 Cr.P.C, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145 or is unable to decide which of the parties was in such possession, he may attach the subject of the dispute, until a competent court has determined the right of the*



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*parties thereto with regard to the person entitled to possession thereof. But when the reports indicate that one of the parties is in possession, rightly or wrongly the Magistrate cannot pass an order of attachment on the ground of emergency.”*

The ingredients necessary for passing an order under Section 145(1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

29. Order under 146 (1) Cr.P.C. Passed by the Executive Magistrate reads as follows:

**“Proceedings of the Revenue Divisional Officer (South)/ Bub Divisional**



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**Magistrate, South Channel**  
**Present: Selvi: K.Sai Vardini, B.E.,**

**R.C.No.** B1/3269/2022

Dated 11.07.2022

Sub:CrPC 146(1) Request received from E2 Royapettah Inspector of Police regarding Law and Order issue between 2 factions of AIADMK at Party Headquarters. Royapettah, Chennai - Orders issued.

Ref: Request letter of Inspector of Police, E2 Royapettah Police Station dt:11.07.22

**Order:**

I have perused the FIR in E2 Royapettah Cr.No. 190 of 2022 u/s 147, 148, 341, 324, 336, 353 IPC r/w 3 of TNPPDL Act forwarded by Inspector of Police, E2 Royapettah Police Station. It is seen from the contents of the FIR that it is a dispute between two factions of a political party.

I have perused the FIR, as well as the photographs and videographs produced by the Inspector of Police, E2, Royapettah Police Station and from the perusal of the above, I am satisfied that there is an imminent possibility of breach of peace, tranquillity and law and order issue.

The Building in question is located in a densely populated residential cum commercial area of central part of Chennai City. If no concrete action is taken, this dispute will lead to serious threat to law and order, as well as end in breach of peace and tranquility.

Though an order under 146 (1) CrPC is not passed at the time of passing the order u/s 145 CrPC in view of the extraordinary situation namely the potentiality of the dispute between these factions which may have a wider ramifications throughout the state, It is essential on the part c the Executive Magistrate to preserve the peace. Therefore, I consider to pass an order of attachment with respect of the building situated in No. 225, Avval Shanmugam Salai, Azad Nagar, Royapettah, Chennai 14 in dispute.

In view of the above circumstances, it is ordered that the prey situated in No. 226, Avval Shanmugam Salsi, Azad Hager, Royage, Chennai 14, is attached, The Inspector of Police & 2, Royapettan Police Station is directed to lock and seal the premises and to provés multicent protection to disputed property. The parties are requested to approach competent civil court to obtain necessary orders and I hereby appoint Tahsildar, Mylapore as receiver of the property and he shall act under the directions of the Revenue Divisional Officer,

Revenue Divisional Officer/  
Sub-Divisional Magistrate Chennai



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To

Thiru Edappadi K. Palaniswamy AIADMK Headquarters  
Avvai Shanmugam Road, Royapettah Chennai and his 200 supporters

Thiru O.Panneerselvam, AIADMK Headquarters  
Avvai Shanmugam Road, Royapettah Chennai and his 200 supporters

The Inspector of Police, E2 Royapaettah Police Station”

The opinion of the Magistrate the dispute between these factions which may have  
a wider ramification throughout the State. It is mere opinion without any materials.

30. In *Prakash Chand Sachdeva vs. State and Other [(1994) 1 SCC 471]*  
the Apex court has held that pendency of civil suit is not ground to drop  
proceedings under Section 145 Cr.P.C. In the above case there was a dispute with  
regrd to the possession of the ancestral house. The dispute was between the father  
and son being the co owners.

31. In *Dharmendra Rajput vs. State of U.P.and others [2010 SCC Online  
All 2020]* the Allahabad HighCourt held that in the garb of proceedings under  
Sections 145(1) and 146(1) Cr.P.C., a person running a business cannot be  
deprived of his right to run the business and he cannot be dispossessed through  
attachment. If a running business by a co-sharer is permitted to be destroyed by



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means of attachment, it would amount to grave miscarriage of justice. The above judgment placed by the learned Senior Counsel Mr.A. Ramesh would not apply to the facts of the present case.

32. This Court in *Pakkiammal vs. Revenue Divisional Officer cum Executive Magistrate and Others [Madras High Court (Jul 3, 2013)]* has held that it is the subjective satisfaction of the Magistrate as to the existence of likelihood of breach of peace, which confers jurisdiction and not the complaint of the police officer. The only jurisdiction vested upon the Executive Magistrate is to declare the party found in possession to be entitled to remain in possession (until evicted by due process of law). Maintenance of the public order is the paramount consideration and not the entitlement and title of the party to the disputed property and also held that the Magistrate duty is only to determine who is in actual possession and not who has the right to possession.

33. In *Ansari And Others vs. Jackiriya and Ors [Madras High Court (Oct 6, 1989)]* this Court also held that the remedy provided under Section 145



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Cr.P.C.is rather summary, in the sense of investing power upon the Executive Magistrate to go into the question of actual or factual possession of the subject matter of dipsute in favour of any one of the parties, without actually going into the merits and deciding the rights of the parties.

34. In *Narayana Asari and others vs. Kandasami Asari [CrI.R.C.No.468 of 1914 Madras High Court (Mar 26, 1915)]* this Court has held that the consideration under Section 145 Cr.P.C., solely with actual physical possession whether lawful or unlawful, whether in contemplation of law enjoyed by the possessor in his own right or on behalf of others.

35. In *Jhummal @ Devandas vs. State of Madhya Pradesh and Others [(1988) 4 SCC 452]* the Apex Court has held that an order made under sec. 145 Cr.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted



36. In *A.Dhaeethu vs. District Collector, Sivagangai Dist.[(2016) 2 MLJ (Crl.) 641 (FB)]* Full Bench of this Court has held as follows:

*“Whenever a Magistrate passes a preliminary order under Section 145(1), such an order should satisfy all the requirements of law namely (i) the arrival of a subjective satisfaction; (ii) recording of the grounds for arriving at such satisfaction; and (iii) issuing the order in writing. But, if no order is passed under Sub-Section (1), the effect of the failure to pass such an order need not necessarily be tested solely on the basis of the language employed in Sub-Section (1), but has to be determined with reference to the nature of the power conferred by the Section in entirety. Hence, the contention based upon the expressions used in Sub-Section (1) does not merit acceptance. It is also held that when an order of attachment could be passed. If an order of attachment is to be passed, then in such a case, a preliminary order under Section 145(1) may be necessary . It is also held that though the Executive Magistrate is required to pass a preliminary order under Section 145(1), the absence of the same will not vitiate his final order*



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*under Section 145(4) of the Code and the The failure of an Executive Magistrate to pass a preliminary order under Section 145(1) of the Code is a mere irregularity and will not affect his jurisdiction.”*

37. Further in paragraph 63 of the above judgement it is held as follows:

*“63. In the light of the above discussion, we answer the questions posed by the learned Judge as follows:-*

*"1.Though the Executive Magistrate is required to pass a preliminary order under Section 145(1), the absence of the same will not vitiate his final order under Section 145(4) of the Code.*

*2.The failure of an Executive Magistrate to pass a preliminary order under Section 145(1) of the Code is a mere irregularity and will not affect his jurisdiction*

*3. Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.*



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4. *The aggrieved parties are empowered to move the very same Authority for reviewing his decision or in its absence, move the competent civil court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases, they can move this Court for a judicial review either under [Section 397](#) of the Code or under [Article 226/227](#) of The Constitution".*

38. In ***Ram Sumer Puri Mahant vs. State of U.P. And others [(1985) 1 SCC 427]*** the Honourable Supreme Court has held as follows:

*“When a civil litigation is pending for the property wherein the question of possession is involved and the parties are in position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection fo the property during pendency of the dispute, there is no justification for initiating a parallel criminal proceedings under Section 145 Cr.P.C. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Therefore, the parallel*



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*proceedings should not continue and the order of the Magistrate directing parallel proceeding should not continue and the order of the Magistrate directing initiation of such a proceeding under Section 145 Cr.P.C must be quashed.”*

39. In ***R.H.Bhutani vs. Miss Mani J. Desai & others [AIR 1968 SC 1444]***

in para 8 it is held as follows:

*“8. The object of s. 145, no doubt, is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined a competent court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute, regarding an immoveable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under sub-s. (1) and thereafter to make an enquiry under sub-s. (4) and pass a final order under sub-s. (6). It is not necessary that at the time of passing the final order the apprehension of breach*



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*of peace should continue or -exist. The enquiry under s. 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of 145.”*



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39.a. In paragraph 13 of the above judgment it is also held as follows:

*“13. The next ground for the High Court's interference was that assuming that the appellant was forcibly and wrongfully dispossessed and the said Salim was assaulted, the said dispossession was completed, a complaint of assault was lodged and the police had already taken action before the preliminary order was passed on June 20, 1966. Therefore, it was said, there was no longer any dispute on the date of the order likely to lead to breach of peace and consequently the order did not comply with the requirements of s. 145(1) and was without jurisdiction. This reasoning would mean that if a party takes the law into his hands and deprives forcibly and wrongfully the other party of his possession and completes his act of dispossession, the party so dispossessed cannot have the benefit of s. 145, as by the time he files his application and the Magistrate passes his order, the dispossession would be complete and, therefore, there would be no existing, dispute likely to cause breach of peace. Such a construction of S. 145, in our view, is not correct, for it does not take into consideration the second proviso to sub-s. (4) which was*



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*introduced precisely to meet such cases. The Magistrate has first to decide who is in actual possession at the date of his preliminary order. If, however, the party in de facto possession is found to have obtained possession by forcibly and wrongfully dispossessed the other party within two months next preceding the date of his order, the Magistrate can treat the dispossessed party as if he was in possession on such date, restore possession to him and prohibit the dispossessor from interfering with that possession until eviction of that person in due course of law. **The proviso is founded on the principle that forcible and wrongful dispossession is not to be recognised under the criminal law. So that it is not possible to say that such an act of dispossession was completed before the date of the order. To say otherwise would mean that if a party who is forcibly and wrongfully dispossessed does not in retaliation take the law into his hands, he should be at disadvantage and cannot have the benefit of s. 145.***

*(Emphasis supplied)*

40. In *Janaki Ramachandran and others vs. State* [1988 LW (CrI) 147] in respect of the subject property there were similar proceedings earlier. The same



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were challenged under Section 482 Cr.P.C.before this court. This Court considering various submissions held that even prior to 3 days Tmt. Janaki Ramachandran had been in possession of the premises even on 31.01.1988, three days prior to the initiation of the proceedings and in such circumstances they are entitled to be in possession of the premises.

41. From the conspectus of various Judgments and the law laid down in respect of the proceedings under Section 145 Cr.P.C. makes it clear that the very object of the Section 145 is to prevent the breach of peace and for that end to provide a speedy remedy by bringing the parties before the Court and ascertaining who of them was in actual possession and maintain the status quo until their rights are determined in a competent Civil Court. The inquiry under Section 145 Cr.P.C. is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. The Court while dealing with the proceedings under Section 145 Cr.P.C. is mainly concerned with the possession of the property in dispute on the date of the Preliminary Order and



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dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same.

42. The impugned Order passed under Section 145 Cr.P.C. does not even speak about who was in actual possession on the day of the Order whereas order is based on the main opinion that there is likelihood of spreading over the issue on various parts of the State. Similarly, Order under attachment passed under Section 146(1) Cr.P.C., it must be reflected in the order that after enquiry the Magistrate is of opinion that none of the parties was in actual possession of subject of dispute at the time of order passed under Section 145 Cr.P.C. or is unable to decide which of the parties was in such possession. It is also relevant to note that 1<sup>st</sup> Respondent passed order under 145 and 146(1) Cr.P.C. mainly based on FIR in Cr.No.190/2022. In her proceedings which is also produced before this Court she has reiterated that only FIR was produced. Whereas in the Status Report police took stand that apart from copy of the FIR, Special Report also sent to 1<sup>st</sup> Respondent whereas RDO proceedings totally silent about Report sent by the police. Whereas she has passed both the orders mainly on the basis of the FIR.



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She not even referred that she referred copy of the FIR or original FIR. These facts clearly show that there is clear non-application of mind on the part of the 1<sup>st</sup> Respondent. Further her proceedings there is no whisper about Report sent by police. It is relevant to note that the status report filed by the police itself indicate that in para 21, there was complaint given by the Ex-Minister Thiru.Jayakumar dated 26.06.2022 that anti social elements are trying to enter AIADMK Head Quarters and also General Council Meeting to be held on 11.07.2022. From 05.07.2022 to 11.07.2022 there was no untoward incident was reported. This itself clearly indicates that the 'B' Party was not in control and possession of the property. On the other hand status report of the police itself indicates that only 'A' Party is in control of the party office.

43. It is also relevant to note that the complaint dated 08.07.2022 also said to have been given for seeking police protection by 'A' Party. Copy of the complaint is also annexed in the typed set, wherein also specific allegation made that some anti social elements may try to enter into the AIADMK headquarters and sought police protection on 08.07.2022. Above complaint is also not denied.



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It is the case of the Respondent Police that they have given bandobast. That itself clearly indicate that the 'B' Party has no control over the property. Further, from the averments in the petition filed by the 'B' party in Crl.O.P.No.16485 of 2022 para 11 it is stated that notice was issued by the party to attend the General Council Meeting on 23.06.2022 served on him. On 14.06.2022 there was a meeting of District Secretaries held in the party headquarters, by way of a press meet given by the Party Organiser Tr.D. Jayakumar, the petitioner ('B' Party ) came to know that the new demand was raised by demanding that the party should be governed by a single leadership. The above averments also clearly indicate that even in the previous meeting held in the office 'B' Party was never incharge of the office. As per Rule 26 of Bye-law of the party placed on record shows that one of the Secretaries of the Central Organisation nominated by the General Secretary will be in charge of Headquarters office. In such a view of the matter without making an enquiry under Section 145 Cr.P.C.as to who was in actual possession on the date of Preliminary Order. Passing the order under Section 145 Cr.P.C.forming the opinion is bad in law.



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44. Similarly without recording the reasons as to which party was in actual possession of the subject of dispute at the time of order passed under 145 Cr.P.C.or 1<sup>st</sup> Respondent was unable to decide as to which of the parties was in such possession, order under Section 146(1) Cr.P.C. Cannot be passed as held by the Apex Court in *Ashok Kumar's case* (supra).

45. Both the Orders passed under Section 145 and 146(1) suffer from non application of mind; the reasons have not been recorded and Preliminary enquiry did not reflect the application of mind as to who was in possession or none of them are in possession, or she was not able to find who was in possession. Only in such scenario the question of attachment could be passed. Without doing so, mechanical Order attaching the property of the headquarters of the prime opposition party of the State will strike the very democratic process will amounts to oppression.

46. From the discussion narrated above 'B' Party having attempted to stall the General Council Meeting, created a warlike situation as a last resort to resort



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the proceedings under Section 145 Cr.P.C.to have a claim over the property.

When any member of any association or party against whom a majority has already taken decision. Without such decision being challenged or nullified, decision of the majority will prevail over. Any person said to have been expelled from primary membership cannot claim an absolute right to treat it as a dispute with regard to the property of the political party which is not belonged to any of the individuals particularly, creating warlike situation by breaking open the door of Building which was kept under lock and key by other side. Such act is nothing but mere trespass.

47. The letter dated 08.07.2022 addressed to the Police by the Ex-Mainister and the Status Report of the Police itself indicate that 'A' Party was in control of the office, which has not reflected in the Order of the Executive Magistrate. Therefore, to initiate the proceedings under Section 145 Cr.P.C., there must be a real dispute in respect of the land or immovable property. The term dispute means there must be a reasonable dispute, *bona fide* dispute between the parties. Therefore, mere creating a dispute on the date of the proceedings by creating a



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warlike situation, it cannot be said that there is an actual dispute existing in respect of the party office.

48. In such a view of the matter the Order impugned under Section 145 and 146(1) Cr.P.C. passed by the 1<sup>st</sup> Respondent stand quashed and 1<sup>st</sup> Respondent is directed to handover the possession of the building to the 'A' Party. The 2<sup>nd</sup> Respondent Police is directed to ensure proper bandobust and protection to the building round the clock.

49. In the result,

- i. Crl.O.P.Nos.16343 of 2022 and 16695 of 2022 filed by 'A' Party (Edappadi Thiru.K. Palanisamy) challenging the Orders passed under Section 145 and 146(1) Cr.P.C are fully allowed.
- ii. Crl.O.P.No.16485 of 2022 filed by 'B' Party (Thiru.O.Panneerselvam) challenging the Order passed under Section 145 Cr.P.C., is partly allowed and Order passed under Section 145 Cr.P.C. in



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RC.No.B1/3269/2022 is set aside and dismissed with regard to prayer to handing over the possession.

- iii. The 1<sup>nd</sup> Respondent is directed to handover the possession to the 'A' Party i.e., Interim General Secretary of the AIADMK Party, Edappadi Thiru.K. Palanisamy forthwith.
- iv. The 2<sup>nd</sup> Respondent Police is directed to ensure proper bandobust and protection to the building round the clock.
- v. Considering the overall situation 'A' party is directed not to permit any cadres or supporters to the building for a period of one month from today.
- vi. Registry is directed to keep the Pen Drive containing video footage in a sealed cover and keep it in safe custody. Copies of photographs filed shall be kept in the case bundle.
- vii. Copy of proceedings of 1<sup>st</sup> Respondent and copy of General Diary to be retained in the case bundle.



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viii.Original General Diary to be handed over to police.

Connected Criminal Miscellaneous Petitions are closed.

**20.07.2022**

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Index : yes

Internet : yes

speaking /non-speaking order

Copy to:

1.The Inspector of Police, E-2,  
Royapettah Police Station  
Chennai 600014.

2. The Public Prosecutor  
High Court, Madras.



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Common Orders in:

- 1. Crl.O.P.No.16343 of 2022 and Crl.M.P.Nos.9425 and 9427 of 2022,**
- 2.Crl.O.P.No.16485 of 2022 and**
- 3. Crl.O.P.No.16695 of 2022 and Crl.M.P.Nos.9799 and 9800 of 2022**

**20.07.2022**