

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition Nos.244 and 1432 of 2015

%06.04.2015

Criminal Petition Nos.244 of 2015

Between:

Chella Venkata Ramana Reddy

and another.Petitioners

AND

State of Andhra Pradesh

Through SHO, Chebrolu PS, Guntur

Rep. by its Public Prosecutor,

High Court of Judicature at Hyd

For the State of Telangana and A.P

and another. Respondents

! Counsel for Petitioners : Sri Deepak Misra

^ Counsel for Respondent No.1 : Public Prosecutor

^ Counsel for Respondent No.2 : Sri Marella Radha

< Gist:

> Head Note:

? Cases referred:

1. AIR 1985 SC 472
2. AIR 2000 SC 1504

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition Nos.244 and 1432 of 2015

COMMON ORDER:

Aggrieved by the order dated 14.11.2014 in RC.No.422/2014/DT passed by the Mandal Executive Magistrate, Chebrolu, Guntur District under Section 145 Cr.P.C. restraining both the parties from entering into disputed lands until is further orders to keep peace in the area, both **A** and **B** groups have filed the instant petitions under Section 482 Cr.P.C. to quash the aforesaid order.

2 a) Parties in **A** and **B** groups are close relations i.e. brothers and other relations and there exist civil disputes between them pending in different courts. For instance, O.S.No.626 of 2013 is a perpetual injunction suit pending on the file of II Additional Junior Civil Judge, Guntur; O.S.No.671 of 2013 is also a perpetual injunction suit pending on the file of Principal Junior Civil Judge, Guntur; O.S.No.627 of 2013 is a perpetual injunction suit pending on the file of III Additional Junior Civil Judge, Guntur. Above all, OS.No.573 of 2014 is a partition suit pending on the file of III Additional District Judge, Guntur. The aforesaid suits are pending between the members of **A** and **B** groups and some other persons.

b) Be that it may, the impugned order reads that on the report of SHO, Chebrolu PS that members of both groups causing law and order problem in the village and trying to occupy the disputed lands covered by Sy.Nos.333, 335/5, 435/3, 331 and 332/3 and 6 of Pata Reddypalem village, the learned Executive Magistrate passed the impugned preliminary order under Section 145 Cr.P.C. restraining both the parties from entering into the aforesaid disputed lands until further orders.

Hence the instant petitions.

3) The main plank of argument of both set of petitioners is that when the civil suits are pending between the parties in respect of same property, the Executive Magistrate shall not exercise jurisdiction to pass an order under Section 145 Cr.P.C. Even assuming that he has jurisdiction, still the Executive Magistrate has not followed the procedure contemplated under Section 145 Cr.P.C. inasmuch as he did not issue notice to the respective rival parties calling for their

written statements to make an enquiry to decide which party was in possession of the disputed lands within the stipulated time mentioned in Section 145 Cr.P.C. Therefore, they argued, the impugned order is vitiated by procedural irregularity besides lacking jurisdiction.

4) Per contra, learned Additional Public Prosecutor submitted that it may be true that when the civil matters are pending, generally Executive Magistrate will not exercise jurisdiction under Section 145 Cr.P.C., but in the instant case none of the parties have produced any injunction order issued by the civil court showing their authoritative possession over the disputed properties and on the other hand, they were wrangling over the properties and causing breach of peace in the area and therefore, upon the report of SHO, the Executive Magistrate had passed a preliminary order restraining both the parties from entering into the disputed properties and the said order of the Executive Magistrate is predominantly aimed at preventing the breach of peace and nothing more. He thus argued that the impugned order does not suffer the vice of illegality or irregularity.

5) In the light of above rival arguments, the point for determination in these petitions is:

“Whether the impugned order of the learned Executive Magistrate is legally sustainable?”

6) **POINT:** The Executive Magistrate gets jurisdiction to act upon, when the dispute between the parties concerning land or water is likely to result in breach of peace. Section 145 Cr.P.C. envisages and guides an Executive Magistrate how to react in such instances. The object of the section is mainly to maintain law and order and to prevent the breach of peace. The business of the Magistrate is not to go into the question of title but to meet the urgency of situation by maintaining the party in possession of the dispute property. The *sin quo non* for the Magistrate to embark upon is the report of police officer and other credible information that a dispute concerning any land, water or the boundaries is likely to cause breach of peace within

his local jurisdiction. Upon receiving such information, the Executive Magistrate shall make an order in writing stating the grounds being so satisfied, call upon the concerned parties to such dispute to attend his court in person or by a pleader on a specified date and time and put-forth their statements or their respective claims in respect of the disputed property. The Magistrate then, without reference to the merits or claims of any of the parties right to possess the subject property in dispute, peruse the statements, hear the parties, receive all such evidence and decide whether any and which of the parties was at the date of the order passed by him under Section 145 Cr.P.C. was in possession of the property of the dispute. Further, during the course of enquiry, if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1). Thus, after deciding the possession of a party, the Magistrate shall treat that party in such possession of the subject property and issue an order declaring such party entitled to possession thereof until evicted therefrom in due course of law and forbid all disturbances of such possession until such eviction.

7) On perusal, the impugned order reads that so far the Executive Magistrate has not passed any final order by calling upon the written statements of both parties, but it appears, he has passed only a preliminary order restraining both the parties which is now challenged. It must be noted that in the impugned order itself learned Magistrate mentioned about the pendency of civil suits between the parties. When the competitive civil courts are already seising of the disputes touching subject properties, the Executive Magistrate will have no jurisdiction to pass any final order under Section 145 Cr.P.C. This has been held by the Honourable Apex Court successively.

a) In ***Ram Sumer Puri Mahant v. State of U.P.*** the Apex Court

observed thus:

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us.”

b) The principle laid down in **Ram Sumer Puri Mahant's** case (1 supra) was upheld by the Apex Court in its another decision reported in **Amresh Tiwari v. Lalta Prasad Dubey**. It was observed thus:

“13. We are unable to accept the submission that the principles laid down in Ram Sumers' case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumers' case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be Wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.”(Emphasis supplied)

c) So, from the above rulings of the Supreme Court, when the dispute touching the same subject property is already pending in civil court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before an Executive Magistrate. There is no demur about this legal principle. However, the present case is concerned, it appears, Executive Magistrate has not passed any final order under Section 145 Cr.P.C. by taking the statements of the parties, but he only passed a preliminary order restraining both the parties from entering into property in order to prevent breach of peace. By virtue of dictum laid down by the Supreme Court the Executive Magistrate is debarred from passing any final order under Section 145 Cr.P.C. declaring his opinion on the possession by either party. Therefore, the parties have to approach concerned civil court to vindicate their rights in respect of disputed properties and obtain a suitable interim order as they are representing that standing crop is there on the disputed land. Till the parties obtain a suitable interim order from the civil court, in order to

prevent the breach of peace, the preliminary prohibitory order passed by Executive Magistrate, in the considered view of this Court, shall be maintained.

8) In the result, both the Criminal petitions are disposed of and ordered as follows:

- a. The petitioners in both the petitions are directed to approach the concerned civil courts where their civil disputes are pending and obtain suitable interim orders in respect of the disputed property at the earliest.
- b. Till suitable orders are passed by the concerned civil courts, the preliminary prohibitory order passed by the Executive Magistrate, Chebrolu, Guntur District restraining both the parties from entering into the disputed properties shall hold good.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 06.04.2015

Note: L.R. copy to be marked: Yes/ No

Murthy