

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.2275 of 2015

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner seeks to quash the proceedings in RC.F No.4705/2014 dated 16.12.2014 passed by Mandal Executive Magistrate-cum-Mandal Revenue Officer, Nellore/2nd respondent herein under Sec.145 Cr.P.C restraining both parties i.e, the petitioner and 3rd respondent from entering into the scheduled property of Shanthi Hirers, Nellore.

2) The petitioner and one Babu Rao are the brothers. One Vutukuru Rajya Lakshmi is the wife of Babu Rao and the 3rd respondent namely Varigonda Vijaya Shankar is their son-in-law. The petitioner's case is that himself and his brother Babu Rao started a partnership firm in the name and style of M/s.Shanthi Stage Decorators at Nellore and subsequently some disputes cropped up between the brothers regarding the affairs of partnership firm. The 3rd respondent who is the GPA Holder of his father-in-law—Babu Rao was trying to harass the petitioner by issuing notices to the petitioner with false allegations and in this connection Writ Petition No.34033 of 2014 on the file of High Court and C.C.No.1230 of 2014 on the file of II Additional Judicial Magistrate of First Class, Nellore are pending between the parties. Added to it, Smt.V.Rajya Laxmi, W/o. Babu Rao filed O.S.No.463 of 2014 on the file of Principal Junior Civil Judge, Nellore against the present petitioner seeking a declaration that she is the sole proprietrix of M/s. Shanthi Hirers, Nellore and for permanent injunction which is also pending.

3) The further case of petitioner is that when the matters as stated supra are pending, at the instigation of 3rd respondent the Sub-Inspector of Police, 5th Town P.S (Law and Order), Nellore submitted report that the bickerings between the two parties as if created law and order problem and basing on the said report, the Mandal Executive Magistrate, Nellore promulgated a prohibitory order under

Sec.145 Cr.P.C restraining both parties from entering into the business premises of Shanthi Hirers.

4) Now the petitioner challenges the validity of the impugned order on the grounds that the said order is not tenable under law in view of the pendency of the civil proceedings and it causes any amount of hardship to petitioner from entering in the premises and doing business.

5) Heard both sides.

6) While supporting the impugned order, learned Additional Public Prosecutor argued that learned Executive Magistrate passed the said order basing on the report of Sub-Inspector of Police informing that there was likelihood threat to the law and order problem due to the disputes between the two groups and therefore, the said order is a valid one and need not be interfered with. He further argued that generally Executive Magistrate will not exercise jurisdiction under Sec.145 Cr.P.C when the civil matters are pending but it appears, none of the parties have produced any injunction order issued by the Civil Court showing their exclusive possession over the disputed property in their management and in contra, they were wrangling over the properties causing law and order problem and therefore, the said impugned order was passed by the Executive Magistrate.

7) In the light of above arguments, the point for determination is:

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

8) **POINT:** A perusal of Sec.145 Cr.P.C would show that the Executive Magistrate gets jurisdiction to act upon, when it comes to his knowledge that disputes between the parties concerning land or water is likely to result in breach of peace. The object of Section 145 Cr.P.C is mainly to maintain law and order and to prevent the breach of peace. The *sin quo non* for the Magistrate to embark upon is the report of police officer and other credible information that a dispute concerning to any land or water or boundaries is likely to cause

breach of peace within his local jurisdiction.

a) 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. Upon putting forth their respective claims, the Magistrate, without reference to the merits or claims of any of the party's right to possess the subject property in dispute, peruse the statements, hear the parties, receive all such evidence and then 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 such party in 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.

9) Now coming to the instant case, a perusal of the impugned order would show that learned Executive Magistrate upon receiving a report from Sub-Inspector of Police, V Town P.S 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 seisin of the disputes touching subject properties, the Executive Magistrate will have no jurisdiction to pass

any final order under Section 145 Cr.P.C.

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.”

10) In the instant case, learned Magistrate it appears has not passed a final order but passed only a preliminary prohibitory order. Therefore, in these circumstances, the parties have to approach concerned civil court to vindicate their rights in respect of disputed properties and obtain a suitable interim order. 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.

11) In the result, this Criminal Petition is disposed of and ordered as follows:

- a. The parties are directed to approach the concerned civil court(s) 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 court(s), the preliminary prohibitory order passed by the Executive Magistrate, Nellore 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: 17.04.2015

SCS