

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1863 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 03-07-2012 in M.C.No.31/2012/B on the file of the Mandal Executive Magistrate, Tadepalligudem.

2. Heard both the counsel.

3. The predominant contention of the learned counsel for the petitioner is that the Mandal Executive Magistrate, Tadepalligudem, passed the order in violation of form No.25 of second schedule of Cr.P.C. He further submitted that while pendency of the suit, the Mandal Executive Magistrate has no power of whatsoever to pass the order under Section 145 Cr.P.C.

4. Per contra, learned counsel for the respondents submitted that the Mandal Executive Magistrate passed the order in order to avoid unpleasant atmosphere in the village.

5. A perusal of the record reveals that the Mandal Executive Magistrate, Tadepalligudem, passed the order on 03-07-2012 under Section 145 Cr.P.C. directing the petitioner and others not to enter into the Village Administrative Officer's Association Building, which is called as Karnala Satram, situated at Ward No.29, Tadepalligudem Town and Mandal. A perusal of the record further reveals that there is some dispute between the petitioner and the respondents with regard to the Village Administrative Officer's Association Building.

6. At the time of arguments, learned counsel for the petitioner submitted that the petitioner herein filed O.S.No.47 of 2012 on the file of the I Additional District Judge, West Godavari, Eluru, against the respondents and Sub-Registrar for declaration and consequential perpetual injunction. He further submitted that the I Additional District Judge granted interim order directing the Sub-Registrar not to register any document in respect of the suit schedule property.

7. A perusal of the record reveals that the petitioner herein filed the suit on 22-03-2012. Learned counsel for the respondents in all fairness submitted that the respondents are parties to the above suit. The fact remains, the learned Mandal Executive Magistrate passed the

order on 03-07-2012 i.e., after filing of the suit by the petitioner. The material placed before the Court falls short to establish whether the Mandal Executive Magistrate passed the above said order with or without the knowledge of the pendency of the suit. Without sufficient material, no motive can be attributed to the then Mandal Executive Magistrate. The fact remains, the Mandal Executive Magistrate passed the order without notice to the petitioner. Any order passed in violation of principles of natural justice is not legally sustainable. Undoubtedly, the impugned order cause some sort of prejudice to the petitioner. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the impugned order and remand the matter to the learned Mandal Executive Magistrate.

8. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 03-07-2012 in M.C.No.31/2012/B on the file of the Mandal Executive Magistrate, Tadepalligudem. However, the matter is remanded to the Mandal Executive Magistrate, Tadepalligudem, with a direction to dispose of the same as expeditiously as possible after affording reasonable opportunity to both parties. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 15-07-2016.

Hsd