

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.14837 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings bearing No.A/02/2016 dated 09.08.2016 passed by the Executive Magistrate & Tahsildar, Yedpalli Mandal, Nizamabad District, whereby the Tahsildar passed “promulgation orders” under Section 133 & 145, as law and order issue arose regarding hereditary Mutawaliship between Abdul Razzak & two others and Shaik Manna & others, where both the parties were restrained to enter into Darga HZT Syed Shahead Habeebullah Hussain (RH) situated at Kurnapalli village of Yedpalli Mandal.

The only contention before this Court urged by the learned counsel for the petitioner is that the Executive Magistrate & Tahsildar, Yedpalli Mandal, Nizamabad District, did not follow the procedure prescribed under Sections 133 & 145 of Cr.P.C and no notice was issued, failed to record his satisfaction about law and order problem under Section 145(1), thereby the proceedings are liable to be quashed, since the order under challenge is against the principles of natural justice.

Learned Public Prosecutor for the State of Telangana supported the order dated 09.08.2016 and contended that as per subsection (1) of Section 145 of Cr.P.C, 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.

The essential two ingredients of this provision are recording of satisfaction about the grounds to initiate such proceedings and giving notice to the parties to appear before the Court either in person or by pleader.

But, in the present proceedings, no satisfaction of the Executive Magistrate is recorded as required under Section 145(1) of Cr.P.C and no notice was ordered to the petitioners requiring them to appear before him to put in written statements of their respective claims. The order was passed by the Executive Magistrate without following the mandatory procedure prescribed under Section 145(1) of Cr.P.C and on this ground alone the proceedings are liable to be quashed.

Section 133 of Cr.P.C deals with conditional order for removal of nuisance and it reads as follows:

“(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or -

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court."

On a careful reading of Section 133 of Cr.P.C it is evident that Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance,

tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order.

But, here, there is no complaint regarding nuisance. Therefore, Section 133 of Cr.P.C has no application to the present facts of the case and at best, it would attract Section 145. But, the Executive Magistrate failed to follow the mandatory procedure prescribed under Section 145, as observed by me in the earlier paragraphs. Hence, the proceedings bearing No.A/02/2016 dated 09.08.2016 passed by the Executive Magistrate & Tahsildar, Yedpalli Mandal, Nizamabad District are against principles of natural justice and vitiated. Consequently, the proceedings are liable to be quashed.

In the result, the criminal petition is allowed by quashing the proceedings bearing No.A/02/2016 dated 09.08.2016 passed by the Executive Magistrate & Tahsildar, Yedpalli Mandal, Nizamabad District.

Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed. No costs.

M. SATYANARAYANA MURTHY, J

Date:13.12.2016
SP