HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.5904 of 2013

ORDER:

Aggrieved by the order dt:27.05.2013 in M.C.No.8 of 2013 on the file of Mandal Executive Magistrate and Tahsildar, Parchur, Prakasam District, prohibiting both parties from entering the disputed land measuring an extent of Ac.0-04 cents in Sy.No.432/2 of Parchur village until further orders, one of the parties namely Bandi Dhanamma filed the instant petition to quash the proceedings in M.C.No.8 of 2013.

2) Heard.

3) The case of the petitioner is that in respect of same property, she filed a suit—O.S.No.9 of 2013 in the Court of Junior Civil Judge, Parchur which is pending and in view of the Civil Court seizing the matter, the prohibitory order passed under Sec.145 Cr.P.C is illegal.

4) Per contra, learned Addl. Public Prosecutor submitted that though it may be true that when civil matter is pending, generally Executive Magistrate will not exercise jurisdiction under Section 145 Cr.P.C., but in the instant case neither party produced any order passed by the Junior Civil Judge Court, Parchur granting injunction in favour of either party and on the other hand, they were wrangling over the disputed property which was likely to result breach of peace in the area and therefore, upon the report of SHO, Parchur, the Executive Magistrate had passed the impugned prohibitory order under Sec.145(2) Cr.P.C restraining

both the parties from entering the disputed property and the said order was primarily aimed at preventing the breach of peace and hence it did not suffer the vice of illegality or irregularity.

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

"Whether the impugned order passed by the learned Executive Magistrate is legally sustainable?"

6) **POINT**: As can be seen, the impugned order was in the nature of a preliminary prohibitory order and no final order is passed sofar. In the impugned order itself learned Executive Magistrate mentioned that issue was pending before the Junior Civil Judge, Parchur. When the competent civil court is already in seisen of the dispute touching subject property, 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.***[1] 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***[2]. It was observed thus:

> *"**Para 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, in the light of above decisions, 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 and to that extent there is no demur. In the instant case, as already observed supra, the Executive Magistrate has not passed any final order by taking the written statements of the parties, but she passed only a preliminary order restraining both the parties from entering the property in order to prevent breach of peace. By virtue of dictum laid down by the Apex Court, the Executive Magistrate is debarred from passing any final order under Section 145 Cr.P.C. Therefore, the parties have to approach concerned civil court to vindicate their rights in respect of disputed property and obtain suitable orders either interim or final in respect of their possession and enjoyment of the disputed property. Till the parties obtain such a suitable order

from the civil court, the preliminary prohibitory order passed by Executive Magistrate shall be maintained, in the considered view of this Court.

8) In the result, this Criminal petition is disposed of and ordered as follows:

a) Both parties are directed to approach the concerned civil court where civil suit is pending and obtain suitable interim orders or final orders in respect of the disputed property at the earliest.

b) Till suitable orders are passed by the concerned civil court, the preliminary prohibitory order passed by the Executive Magistrate, Parchur restraining both parties from entering the disputed property shall hold good.

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

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U. DURGA PRASAD RAO, J

Date: 12.08.2016
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[1] AIR 1985 SC 472
[2] AIR 2000 SC 1504