

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1401 OF 2016

ORDER:

- 1). Challenging the order passed by the Tahasildar and Executive Magistrate, Railway Kodur Mandal, in initiating the proceedings under Section 145 Cr.P.C., the present Revision is filed under Sections 397 and 401 Cr.P.C.
- 2). Heard both the learned counsel appearing for the petitioners and respondents.
- 3). A reading of the impugned proceeding would show that the Revenue Divisional Officer, Rajampet, issued order of stay including mutation of the names in the revenue records in respect of the land in Sy.No.36/2 admeasuring Ac.2.79 cents of Raghavarajupuram village until disposal of the appeal, on the basis of a requisition received from Akula Gandharva Krishna (minor) represented by his mother Smt. Akula Vanaja, complaining against one Padidam Ramachandraiah (first petitioner herein), who is illegally making construction in the disputed site. The prohibitory orders came to be issued under Section 145 Cr.P.C., after calling for a report from the Mandal Revenue Officer, prohibiting the entry of the first petitioner herein and another in disputed land as the same is creating law and order problem.

4). Learned counsel for the petitioner mainly submits that the petitioners herein have purchased land to an extent of Ac.1.39 $\frac{1}{2}$ cents out of Ac.2.79 cents in Sy.No.36/2 of Railway Kodur village and Mandal through a registered sale deed dated 26.07.2000 from one Meda Venkata Subbaiah and since then they have been in possession and enjoyment of the property. It is urged that pursuant to a notification issued by M/s.Hindustan Petroleum Corporation for establishment of petroleum retail outlet at Railway Kodur, the petitioner herein applied for the same and offered the subject land for establishment of petrol retail outlet. Subsequently, a letter of intent was issued in favour of the petitioners who also entered into an agreement for establishment of petroleum retail outlet in the subject land. At that point of time, the impugned order came to be passed at the behest of the second respondent. It is said that respondents 1 and 2 already filed O.S.No.4 of 2014 on the file of the Junior Civil Judge at Railway Kodur, YSR District against the petitioners and Hindustan Petroleum Corporation, seeking permanent injunction restraining the petitioners herein and their men from interfering with their alleged peaceful possession and enjoyment over the suit schedule property and also restraining the Hindustan Petroleum Corporation from granting any permission or license. It is urged that since I.A., filed for temporary injunction is dismissed, the question of

continuation of proceedings under Section 145 Cr.P.C., would be an abuse of process of law.

5). The same is opposed by learned counsel for the respondents 4 and 5 stating that the Revision itself is not maintainable since main proceedings are still pending. He further submits that after initiation of 145 Cr.P.C., proceedings, 3 F.I.Rs., came to be registered which show existence of breach of peace and as such there is no illegality in passing the impugned order. It is urged that pendency of civil proceedings is not a bar for continuation of these proceedings.

6). Considering the issue as to maintainability of revision against an order passed initiating proceedings under Section 145 Cr.P.C., it would be useful to refer to the judgment of the Apex Court in **Mohit alias Sonu and another v. State of Uttar Pradesh and another**¹. Dealing with the aspect of what an interlocutory order as mentioned in 397(2) Cr.P.C., is about the Apex Court held that any order which substantially affects rights of accused or decides certain rights of parties is not an interlocutory order.

7). Though the learned counsel for the respondents opposed the same referring to various judgments, but it is to be noted that if substantially rights are affected, definitely revision would lie in view of the judgment of the Apex Court referred to above.

¹ (2013)7 Supreme Court Cases 789

8). The question would be whether substantial rights of the petitioners are affected?

9). As seen from the material available on record, though the petitioners were successful before the Civil Court in obtaining an injunction and the said orders were upheld by the Apex Court, the Mandal Executive Magistrate circumvented the same by directing both the parties not to enter into the subject land. Therefore, the argument that no revision would lie against the impugned order cannot be accepted since the rights of the petitioners appears to have been affected though they were successful before competent courts of law.

10). That being the position, the next question would be; *whether the Executive Magistrate was justified in invoking the proceedings under Section 145 Cr.P.C?*

11). As seen from the record, the respondents herein filed O.S.No.4 of 2014 on the file of the Junior Civil Judge at Railway Kodur, seeking permanent injunction. Pending the said O.S., the learned counsel for the respondents 4 and 5 herein filed I.A.No.17 and 19 of 2014 seeking temporary injunction under Order 39 Rules 1 and 2 of C.P.C., against the petitioners 1 and 2 herein and others in respect of the very same property, which is the subject matter of the proceedings under Section 145 Cr.P.C. About 17 documents came to be marked on behalf

of the petitioners and 11 documents on behalf of the respondents therein. After taking into consideration all the documents, the court found that the petitioners therein (respondents herein) have not made out a prima facie case and as such held that the petitioners therein are not entitled for the relief of temporary injunction against the petitioners herein, who were shown as respondents 1 and 2 and the Hindustan Petroleum Corporation, who were shown as respondents 3 and 4. Challenging the same, two appeals viz., C.M.A.Nos.2 of 2015 and 3 of 2015 came to be filed before the Court of Additional District Judge, Kadapa at Rajampet. By its judgment dated 08.08.2016 the learned District Judge dismissed the same confirming the findings of the Junior Civil Judge. From the above, it is clear that there exists a civil dispute between the parties and the I.As., filed by the respondents 4 and 5 herein seeking temporary injunction restraining the petitioners herein from interfering with possession, were dismissed long prior to the passing of the impugned order. It is nodoubt true that pendency of civil dispute between the parties by itself will not lead to termination of proceedings initiated under Section 145 Cr.P.C., but it all depends upon the facts and circumstances of the each case.

12). As seen from the record, the petitioners herein also filed W.P.No.19834 of 2016 against the respondents herein seeking suspension of the proceedings in D.Dis.LRDT5732015 dated

08.06.2016, wherein the power of the Revenue Divisional Officer to entertain the appeal for cancellation of pattadar passbooks and title deeds was questioned. By an order dated 24.06.2016 this Court held that the Revenue Divisional officer exceeded his jurisdiction by deleting the entries made in the revenue records and accordingly granted an interim direction.

13). Learned counsel for the respondents relied upon a judgment of the Apex Court in **R.H.Bhutani v. Miss Man.J.Desai and others**² in support of his plea that continuation of proceedings under Section 145 Cr.P.C., cannot be stalled. It is to be noted that in the said case the question was whether on the basis of material available, the Magistrate was right in issuing 145 Cr.P.C., proceedings. It was found that if the Magistrate is satisfied that there exists a dispute after calling for a report and if there is likelihood of breach of peace, there is no bar against him acting under Section 145 Cr.P.C. It has been further held that sufficiency of material cannot be enquired into in a Revision.

14). In **Ram Sumer Puri Mahant v. State of U.P. and others**³, the Apex Court held that when a civil litigation is pending for the same property wherein the question of possession is involved and the parties are in a position to approach the civil court for interim orders,

² AIR 1968 Supreme Court 1444

³ (1985) 1 Supreme court Cases 427

initiation of parallel criminal proceeding under Section 145 Cr.P.C., would not be justified. It has been held that the parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the Criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and when the parties are in a position to approach the civil court for obtaining appropriate orders.

15). In **Mohd. Shafiuddin and another v. State of A.P. and others**⁴ a learned single Judge of this Court observed as under :

"Thus, examination of the provisions of Section 145 Cr.P.C., makes it clear that it is a measure provided by the Legislature with a limited operation. Section 145 Cr.P.C. does not oust the jurisdiction of the Civil Court. It operates only when the parties have not approached any Civil Court. The Civil Courts will have jurisdiction to try all suits of civil nature excepting suits of which their cognizance either expressly or impliedly barred under the provisions of Section 9 of Code of Civil Procedure. The powers given to the Executive Magistrate under Section 145 Cr.P.C. are very much limited and would not oust the jurisdiction of Civil Court. The Supreme Court on number of occasions took the stand that where the civil suit for possession or for declaration of title in respect of the same property, and where reliefs regarding protection of the properties concerned, can be applied for and granted by the Civil Court, the proceedings under Section 145 Cr.P.C., should not be allowed to continue. It is the Civil Court which is competent to decide the question of title as well as possession between the parties and the orders of the Civil Court would be binding on the Magistrate. Admittedly, in the present case the contesting 6th respondent filed the suit in O.S.No.6665 of 2003 seeking injunction where the Court has to go into the possessory aspect of the matter also in deciding the question. It is submitted across the Bar that an application is already filed seeking temporary injunction and it is pending for disposal. Thus, the subject matter of the dispute is now before the Civil Court which has got to decide once for all the

⁴ 2006(2) ALD (CrI.) 179 (AP)

respective claims of the parties before it. It is not as though the relief regarding protection of the subject-matter of this case cannot be applied for and granted by the Civil Court. Thus, when the civil dispute is pending before the Civil Court with regard to the same subject-matter, the powers of the Executive Magistrate under Section 145 Cr.P.C., are excluded, be it that the proceedings before the Executive Magistrate were initiated prior to the institution of the suit or after the institution of the suit. The remedy open to the parties is only to settle their claims before the Court where the civil suit is pending and the jurisdiction of the Executive Magistrate under Section 145 Cr.P.C., gets excluded the moment the civil proceedings are initiated."

16). Even in **Amresh Tiwari v. Lalta Prasad Dubey and another**⁵, the Apex Court held that the SDM was right in discontinuing the proceedings under Section 145 Cr.P.C. It has been held that it is not in every case where a civil suit is filed, Section 145 Cr.P.C., proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate.

17). As seen from the material placed before the Court, O.S.No.4 of 2014 was filed by the respondents herein seeking permanent injunction. The averments in the plaint would show that one Akula

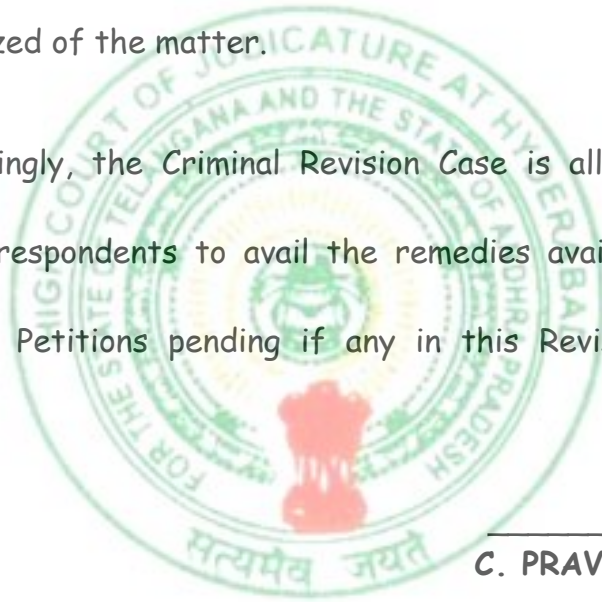
⁵ (2000) 4 Supreme Court Cases 440

Seshamma, who died on 15.10.2001, was the paternal great grand mother of the first plaintiff and she executed a registered Will dated 04.08.2001 bequeathing the suit schedule property in favour of the first plaintiff represented by his mother as natural guardian. It is said that since the Will came into force after the death of Seshamma, the respondents/plaintiffs became the absolute owners and have been enjoying the suit schedule property without any interruption, by raising the Mango trees in Ac.0.40 cents. It has been urged that the defendants 1 and 2 who are the petitioners herein claiming themselves to be owners produced certain documents in favour of the respondents 3 and 4 seeking permission for establishment of a petrol bunk in the schedule property. Respondents 3 and 4 are in turn making efforts to give permission to the defendants 1 and 2 for starting of a petrol bunk in the schedule property. Claiming themselves to be the owners and also in possession of the property they filed a suit seeking injunction restraining the four defendants from interfering with the property. I.A.Nos.17 and 19 of 2014, which were filed for temporary injunction came to be rejected and even the appeals filed against the said orders were also rejected. Prima facie a reading of the order passed by the civil court would show that there was a symbolic delivery of possession without dispossession of actual persons in possession and items in the schedule to the decree-holders. It has been held that "the plaintiffs in the

said suit have failed to establish prima facie possession and also necessary title and other ingredients to satisfy for temporary injunction which is a *sine-qua-non* for granting the relief.

18). Having regard to the above circumstances, since the main suit itself is pending before the trial court and as the respondents have failed to get appropriate relief, though they claim to be in possession, this Court is of the view that in the facts of the case order under Section 145 Cr.P.C. ought not to have been issued, since the civil court is already seized of the matter.

19). Accordingly, the Criminal Revision Case is allowed, leaving it open to the respondents to avail the remedies available under law. Miscellaneous Petitions pending if any in this Revision shall stand closed.



C. PRAVEEN KUMAR, J

Date: 18.10.2016
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