

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.970 of 2005

JUDGMENT:

This petition is filed under Section 397 and 401 of Cr.P.C assailing the order dated 09.12.2004 in Crl.R.P.No.2 of 2004 passed by the I Additional Metropolitan Judge, Visakhapatnam setting aside the order dated 20.12.2003 in M.C.No.31 of 2002/CC passed by the Sub-Divisional Magistrate, Visakhapatnam.

The only ground urged before this Court during hearing is that the civil suit is pending in O.S.No.772 of 2002 before the I Additional Senior Civil Judge, Visakhapatnam and there is every possibility of interfering with the possession of 'B' schedule property by the respondents in case the order passed by the revisional Court is sustained and that there is every possibility of law and order problem in the area.

The present revision is filed against the notice issued under Section 145(1) Cr.P.C, calling upon the petitioners to file his written statement. After receiving written statement, the Executive Magistrate either Mandal or Sub Divisional Officer has to pass an order after affording an opportunity under Section 145(8) Cr.P.C. issuance of notice under Section 145(1) Cr.P.C. is only a preliminary step in passing final order. Therefore, issuance of notice is only interlocutory in nature and thereby, no revision is maintainable against such an order in **Shamsher Singh v State of U.P and others**¹. Persuaded by the judgment of the Allahabad High Court and that the order is filed, the step towards passing final order and issuance of notice is only a preliminary step to pass final order under Section 145(8) Cr.P.C and it would not determine the rights of the parties culminating the entire proceedings. Therefore, the notice under challenge is only interlocutory in nature and in view of

¹ 1984(2) Crimes 551

the bar under Section 397(2) Cr.P.C and no revision is maintainable. Accordingly, I hold that the revision petition is not maintainable.

If the above principles applied to the present facts of the case admittedly a civil suit is pending in O.S.No.772 of 2002 and thereby initiation of miscellaneous proceedings under Section 145 Cr.P.C. is impermissible under law in view of the law laid down in the above reference. Therefore, the order passed by the revisional Court is in accordance with law. However, if there is any apprehension that the respondents may be disturbed from the possession the petitioner is at liberty to approach the Competent Court by filing petition under Order 39 Rules 1 and 2 of C.P.C.

With the above observation, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

Date: 03.08.2017
kvrn

M. SATYANARAYANA MURTHY J

