

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.5173 of 2016****ORDER:**

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the Order dt.14.03.2016 in R.C.No.150/2014-C passed by the Executive Magistrate, Macharla, Guntur District, restraining the petitioners from enjoyment of right of cart track after following necessary procedure contemplated under Section 147 Cr.P.C.

The said Order is now under challenge in this Petition on various grounds, but mainly on the ground that the respondent has no right to enter into the property of this petitioner and not entitled to exercise his right either by easement or otherwise, but the Executing Magistrate passed an Order without considering the right of the respondents possessed in the land to enjoy the cart track to carry the paddy from his field to the main road etc.,

During hearing, learned counsel for the petitioner, contended that the Order passed by the Executive Magistrate will continue only for three months. However, learned counsel for the respondent contended that the petitioners are entitled to claim right by way of customary easement under Section 18 of the Easements Act.

In the Order, the Executive Magistrate recorded the contention of both parties and ultimately concluded that the petitioners are also enjoying such right of the land of others while obstructing the respondent from enjoying the customary easement right of cart track, but the main requirement under proviso of Clause (3) of 147 Cr.P.C. is that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three

months next before the receipt under sub Section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

The Order of the Executive Magistrate is clear that the petitioners are obstructing the respondents from enjoying the right but without recording the requirement under proviso to sub Section 3 of Section 147 Cr.P.C. In the absence of finding about exercise of such right as required under proviso to sub Section 3 of Section 147 Cr.P.C, the Order cannot be sustained. Therefore, the Order dt.14.03.2016 in R.C.No.150/2014-C Passed by the Executive Magistrate is hereby set aside while remanding the matter to the Executive Magistrate to pass appropriate Orders complaining the requirement under proviso to Sub Section 3 of Section 147 Cr.P.C. within three months from the date of receipt of a copy of this Order.

With the above direction, this Criminal Petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date: 29.12.2017

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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRIMINAL PETITION No.5173 of 2016

Dt. 29.12.2017

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