

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.893 of 2005

ORDER:

This Criminal Revision, under Sections 387 and 401 Cr.P.C, is filed challenging the Order dt.18.05.2005 passed in M.C.No.21 of 2005 by the Sub Divisional Magistrate at Visakhapatnam, restraining the petitioners herein, their agents, subordinates and henchmen from entering into the petition schedule land, pending further enquiry in the matter.

The petitioners are B Party in M.C.No.21 of 2005 on the file of Sub Divisional Magistrate, Visakhapatnam and the Sub Divisional Magistrate, Visakhapatnam, having arrived at a conclusion that there is likelihood of criminal breach of peace and public tranquility and to ensure law and order and to avoid any possibility of committing unlawful activities, passed the Order under challenge.

Section 145 of the Code of Criminal Procedure contemplates the procedure for passing an order. According to Section (1) of 145 Cr.P.C., whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute is 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 order passed by the Sub Divisional Magistrate, Visakhapatnam, is not in consonance with Section 145(1) Cr.P.C., but it is an order passed under Sub Clause 4 of Section 145 Cr.P.C. The question of passing such an order under challenge would arise only after compliance of the procedure contemplated under Clause (1) of Section 145 Cr.P.C. Till today, no steps were taken in that regard. The Order passed by the Sub Divisional Magistrate, Visakhapatnam, without complying the procedure prescribed under Clause (1) of Section 145 Cr.P.C., is illegal and is liable to be set aside. However, the parties are at liberty to redress their grievance before the Civil Court.

Accordingly, this Criminal Revision Case is disposed of.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 07-09-2017.
eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.893 of 2005

Dt. 07-09-2017

eha

