

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 2366 OF 2017

Between:

Avula Veeramma & Ors. ... Petitioners

V/s.

State of Andhra Pradesh
Represented by its Public Prosecutor
High Court of Judicature for the State of
Telangana & Andhra Pradesh
Hyderabad & Ors. ... Respondents



Counsel for the Petitioners: Sri N. Subba Rao

Counsel for the Respondents: Public Prosecutor [A.P.]

The court made the following: [order follows]

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 2366 OF 2017

O R D E R :

This Criminal Revision Case is filed under section 397 and 401 of Cr.P.C., questioning the propriety and legality of the order passed by the Mandal Executive Magistrate-cum-Tahsildar, Chinnamandyam Mandal, Kadapa district, in dM.C.No. 7 of 2017, dated 11/08/2017, prohibiting the respondents not to obstruct the existing rastha/donka or interference by the respondents or by any other persons into the disputed Government site under section 145 Cr.P.C. till final verdict is pronounced by the Executive Magistrate-cum-Tahsildar.

2. The main contention of the petitioners is that a suit is filed in OS.No. 23 of 2017 on the file of the Court of Principal Junior Civil Judge, Rayachoti, Kadapa district, for granting of permanent injunction in respect of the same property and also filed I.A.No. 152 of 2017 for grant of temporary injunction. When the Court ordered notice to third defendant. The petitioner/third defendant, who approached the

Executive Magistrate and submitted a representation. Thereupon the order under challenge came to be passed which is illegal.

3. Learned Public Prosecutor for the State of A.P. supported the order passed by the Executive Magistrate in all respects, while contending that the order was passed only to avoid unnecessary complications with regard to the rights in rastha/donka and requested this Court to dismiss this criminal revision case.

4. Section 145 Cr.P.C. deals with the procedure where dispute concerning land or water is likely to cause breach of peace and the procedure to be followed by the Executive Magistrate is also laid down under the same section.

5. According to 145 [1] of Cr.P.C., whenever an Executive Magistrate is satisfied from a report of a Police Officer or upon other information that a dispute 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.

6. The preliminary steps to be taken by the Executive Magistrate is to record his satisfaction and pass an order directing the parties to appear in-person or by pleader but the order under challenge is totally silent with regard to passing such an order directing the petitioner to appear either in-person or through pleader and file objections if any on the next date and time but appears to have passed the order under challenge under clause 4 of Section 145 of Cr.P.C.

7. When the Executive Magistrate satisfies the possibility of breach of peace, the Executive Magistrate without reference to the merits or claim of either of the parties on their appearance or filing written statement as to their rights over the subject property peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take further evidence, if any, as he thinks necessary to decide whether any and which of the parties was, at the

date of order made by him under sub-section [1] by following other steps.

8. In the present facts of the case, a civil suit is pending and the dispute is seized by the Civil Court and the order passed by the Executive Magistrate is without following the procedure under sub-section [1] of 145 Cr.P.C. is illegal and therefore, on this ground the impugned order passed by the Executive Magistrate in M.C.No.7 of 2017 is hereby set aside while directing the parties to agitate before the regular court in Principal Junior Civil Judge, Rayachoti, Kadapa district, in O.S.No. 23 of 2017.

9. With the above direction, the Criminal Revision Case is allowed.

10. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE SATYANARAYANA MURTHY.

30/08/2017
I s L

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2366 OF 2017



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