

THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN

&

THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.882 of 2017

JUDGMENT: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in WP.No.7855 of 2017 dated 02.06.2017.

The appellant herein is the petitioner in the writ petition. She invoked the certiorari jurisdiction of this Court to quash the order of the Tahsildar cum Mandal Executive Magistrate in passing an order under Section 145 of the Criminal Procedure Code on 16.02.2017. The learned Single Judge dismissed the writ petition, and relegated the petitioner to the remedy of invoking the jurisdiction of the Sessions Court. Aggrieved thereby, the present appeal.

Before us Sri M. Solomon Raju, learned counsel appearing on behalf of the appellant-writ petitioner, would contend that, against the order passed by the Tahsildar, the Certiorari jurisdiction of this Court can be invoked; the learned Single Judge erred in not entertaining the writ petition; in the light of the judgment of the Supreme Court in RAM SUMER PURI MAHANT v. STATE OF UP¹, as a civil litigation involving the question of possession is pending, initiation of proceedings under Section 145 Cr.P.C is not justified; and the Tahsildar also erred in passing the order seven months after the

¹ (1985) 1 SCC 427

incident, that too without putting the appellant-writ petitioner on notice and without giving her an opportunity of being heard.

This Court, no doubt, has the power under Article 226 of the Constitution of India to entertain a writ petition against an order passed by the Tahsildar under Section 145 Cr.P.C. The question, whether the writ petition should be entertained where the petitioner has an effective alternative remedy, are all matters within the discretion of the Court. In the present case, the learned Single Judge has exercised his discretion to relegate the appellant-writ petitioner to the remedy of invoking the jurisdiction of the Sessions Court. While a Writ Petition would also lie for violation of principles of natural justice, this again is a matter which can be agitated before the Sessions Court. Likewise the contention, that proceedings under Section 145 Cr.P.C cannot be initiated during the pendency of civil litigation, can also be urged before the Sessions Court.

The scope of interference in an intra-court appeal, under Clause 15 of the Letters Patent, is extremely limited. Save patent illegality in the order of the learned Single Judge, no interference is called for. Exercise of discretion by the learned Single Judge, to relegate the appellant-writ petitioner to the remedy of invoking the jurisdiction of the Sessions Court, cannot be said to suffer from such a patent illegality as to warrant interference in proceedings under Clause 15 of the Letters Patent. We see no reason, therefore, to interfere with the order under appeal. Needless to state that, on the jurisdiction of the Sessions Court being invoked, the appellant-writ petitioner's contentions shall be examined on its merits uninfluenced by the

observations made either in the order under appeal or in the order now passed by us.

Subject to the aforesaid observations, the writ appeal fails and is, accordingly, dismissed. Consequently, pending miscellaneous applications shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

July 10, 2017
DSK

