

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3272 of 2016

ORDER :

Impugning the proceedings of the Mandal Executive Magistrate, Unguturu of Krishna District in M.C.No.43 of 2016 dated 03.12.2016 in respect of land in Survey No.200/3 of Ac.3.12 cents of Telaprolu Village, from the report of the revision petitioner herein by name, Banala Subhashini, to the Station House Officer, Unguturu, that resulted from the police forwarded to the learned Mandal Executive Magistrate, stating there is law and order problem from breach of peace in relation to the land, the Mandal Executive Magistrate passed an order under Section 145 Cr.P.C. preventing both sides from entering the land in question, despite referring to the factum of earlier civil litigation allowed from O.S.No.269 of 1984 on the file of Sub-Court, Gudivada and the matters went upto the Supreme Court, apart from W.P.No.12521 of 2016 in this Court, in relation to issuance of pattadar passbook in favour of the revision 3rd respondent, and even by the time, the report received, O.S.No.65 of 2016, a suit for declaration of title and for injunction maintained by the 3rd respondent against the revision petitioner, is pending on the file of XI Additional District Judge, Gudivada, in view of the factum of both parties are seeking cancellation of the registered sale transactions effected by Smt.B.Bhanu and also as regards possession over the property.

2. In the factual background supra in nutshell, heard both sides at length and perused the impugned order, gist of which referred supra and also the provisions and propositions on the scope of law.

3. The law is well settled by consistent expressions of the Apex Court atleast from Ram Sumer Puri Mahant v. State of U.P.¹ that was though differed in Jhummamal @ Devandas v. State of Madhya Pradesh², to some extent, in Ram Sumer Puri Mahant (supra), it is observed categorically that parallel proceedings should not continue and the order of the learned Magistrate should be quashed, in view of the civil proceedings already initiated and are pending. Whereas, in Jhummamal (supra), it is observed that, merely because a civil suit is pending that does not mean proceedings under Section 145 Cr.P.C. should be set at naught and Ram Sumer Puri Mahant (supra) does not laid down any such broad proposition. In Jhummamal (supra), it is observed further saying “We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property is concerned can be applied for and be granted by the civil Court, then proceedings under Section 145 should not be allowed to continue. This is because civil Court is competent to decide

¹ 1985(1) SCC 427

² 1988(4) SCC 452

the question of title as well as possession between the parties and the orders of the civil Court would be binding on the concerned Executive Magistrate.”

4. The subsequent expression of the three Judge Bench in resolving the controversy from the conflicting expressions supra of the two Judge Bench is in *Amresh Tiwari v. Lalta Prasad Dubey*³, wherein it is clearly observed that the Sub-Divisional Magistrate, on knowing the civil proceedings, rightly dropped the proceedings initiated already under Section 145 Cr.P.C. and the High Court went wrong in passing adverse remarks against the Sub-Divisional Magistrate and thus the Apex Court ultimately upheld the order of the Sub-Divisional Magistrate and deleted from the record the said adverse remarks, by cautioning that judicial restraint is required. It is, practically, in saying, once civil Court seized of the matter, parallel criminal proceedings won't lie.

5. The subsequent expression immediately to the three Judge Bench supra, of the two Judge Bench of the Apex Court is *Mahant Ram Saran Dass v. Harish Mohan*⁴. In this expression, none of the three earlier expressions were referred, admittedly. It is, however, observed in tune to the expression in *Ram Sumer Puri Mahant* (supra) that “It is true that the applicant before the Magistrate, has not been arrayed as party-defendant in the civil suit, but that will not alter the position in any manner since in

³ AIR 2000 SC 1504

⁴ 2001(10) SCC 758

our view the civil Court being in seisin of the matter, any appropriate relief could be obtained is from the civil Court itself and the Executive Magistrate had no jurisdiction to entertain the application under Section 145, and to pass any orders thereon. In the circumstances, the impugned order of the High Court as well as the proceedings initiated before the Magistrate under Section 145 Cr.P.C. stand set aside.” It is also by reiterating the principle that once civil Court is seisin of the matter, the criminal proceedings cannot survive under Section 145 Cr.P.C. No doubt, in *Amresh Tiwari* (supra), there is a further observation by the three Judge Bench, as rightly pointed out that the land in question is also somewhat different to the land involved in the civil *lis*. It is only there from to say, if at all in relation to the land, once civil Court is seisin of the matter, the parallel criminal proceedings under Section 145 Cr.P.C. even initiated earlier, will not survive but for to stop.

6. The other expression in this line of another two Judge Bench of the Apex Court is *Ranbir Singh v. Dalbir Singh*⁵. There also, none of the earlier expressions were referred. However, it is observed by reiterating the settled principle that once civil Court is seisin of the matter, the criminal proceedings under Section 145 Cr.P.C. will not survive to continue.

7. It is, thereafter, there is a three Judge Bench expression of the Apex Court in *Mahar Jahan v. State of Delhi*⁶, wherein also

⁵ 2002(3) SCC 700

⁶ (2004) 13 SCC 421

none of the expressions referred supra, came for consideration, from reading of the judgment. However, it is held that as suit is already filed for permanent preventive injunction restraining 2nd defendant claimed to have been the divorced wife of the father of the plaintiffs from dispossessing the plaintiffs from the house in question and also restraining the defendant from entering into any dealings relating to the property, initiation of Section 145 Cr.P.C. proceedings by the 2nd respondent/ defendant, complaining of apprehension of breach of peace occasioned by dispute as to possession of property is unsustainable, as it is a civil dispute, pure and simple that cannot be given colour of a criminal case and parties are thereby granted liberty to approach the civil Court for any interim relief which may exercise its powers under Sections 94 and 151 of the Code of Civil Procedure, 1908, to grant appropriate ad-interim relief without being embarrassed by the limited scope of the suit, which was for preventive injunction. It is ultimately in saying, even civil suit pending without interim relief, Section 145 Cr.P.C. proceedings cannot be invoked even it is a suit for bare injunction, but for if at all to obtain any protective relief in such civil matter.

8. There is subsequent another two Judge Bench expression of the Apex Court in Ashok Kumar v. State of Uttarakhand⁷, wherein also, none of the expressions referred supra came for consideration. However, it is categorically held particularly from paras 11 and 12 that there is nothing to show in the facts as to

⁷ 2013(3) SCC 366

emergency exists to invoke Section 146(1) Cr.P.C. and to attach the property in question. Though, in case of emergency, said provision can be invoked, which has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Executive Magistrate cannot pass an order of attachment on the ground of emergency.....The Civil suit was filed prior in point of time. It is for the civil Court to decide as to who was in possession on the date of the filing of the suit. In any view, there is nothing to show there was an emergency, so as to invoke the powers under Section 146(1) Cr.P.C. to attach the property, specially, when the civil Court is seized of the matter.

9. The sum and substance of said expressions in one line including by showing the creases from the observations in the expression in Jhummal (supra) that even Sections 145 to 147 proceedings initiated before the filing of civil suit those cannot be continued after civil Court is seised of the matter. After filing of civil suit, the question of initiation of said proceedings in relation to the property covered the lis does not arise. What the law says further from the expressions is that, the Executive Magistrate cannot pass any order, once there is anything to say that prima facie, any person in possession and once there is a civil matter pending.

10. Here, undisputedly, it is the revision petitioner as 2nd defendant, even after civil suit pending for declaration and

injunction and plaintiff therein sought for temporary injunction which she is contesting, she moved the police, who in turn moved the Executive Magistrate in his passing the order preventing both parties not to entertain. It is she having approached again, impugning the order, saying she is already in possession and the order of the Executive Magistrate interdicting her possession is unsustainable. We need not go into it, but for, to say that it is already directed by the Executive Magistrate that the crop is harvested in the subject land, the officials shall realize the yield and the sale proceeds be deposited to the D.D.O. Account, so that, subject to the result of the civil *lis*, for the persons being entitled as per any order of the civil Court to claim.

11. Having regard to the above, there is no urgency even to continue the Section 145 Cr.P.C. proceedings, apart from the same otherwise, no way sustains and even it is the revision petitioner that invoked the police for initiation of Section 145 Cr.P.C. proceedings that is not a ground much less for the 3rd respondent herein so to submit even to continue the proceedings, from the above settled expressions of law.

12. Accordingly and in the result, the Criminal Revision Case is allowed and the impugned order dated 03.12.2016 in M.C.No.43 of 2016 passed by the Mandal Executive Magistrate, Unguturu of Krishna District is set aside, as it is not sustainable to continue. In view of the factual matrix, it is necessary to observe that the

learned District Judge can consider to give early disposal of the pending and part heard injunction application and if necessary by invoking Section 151 Cr.P.C. call for the amount sought to be deposited, pursuant to the proceedings of Section 145 Cr.P.C. of the learned Executive Magistrate supra, to deposit to the credit of the pending civil matter and invest in F.D. so that ultimately the parties, who are being entitled can be given the same.

Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22-02-2017
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Note:
L.R copy to be marked-yes.



* HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL REVISION CASE No.3272 of 2016

%22-02-2017

Between:

Banala Subhashini

...petitioner

Vs.

The State of Andhra Pradesh and two others

... Respondents

!Counsel for the petitioner : Sri K.Ananda Rao

Counsel for the Respondent No.3: Sri S Subba Reddy

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>Head Note:

? Cases referred:

¹ 1985(1) SCC 427

21988(4) SCC 452

³ AIR 2000 SC 1504

⁴ 2001(10) SCC 758

⁵ 2002(3) SCC 700

⁶ (2004) 13 SCC 421

⁷ 2013(3) SCC 366





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

CRIMINAL REVISION CASE No.3272 of 2016

Between:

Banala Subhashini

...petitioner

Vs.

The State of Andhra Pradesh and two others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 22.02.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
 - 2 Whether the copies of judgment may be marked to Law Reports/ Journals Yes/ No
 - 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No