

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.2116 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings in Cr.No.18 of 2011 Station House Officer, Kakinada Port Police Station, Kakinanda, East Godavari District. The case was registered under Section 145 of the Criminal Procedure Code.

2. Heard counsel for the petitioner and the learned Public Prosecutor, who takes notice for the respondent.

3. The FIR was registered *suo motu* by the Station House Officer, Port Police Station, Kakinada. The report, on the basis of which the case is registered, was given by the Sub-Inspector of Police, Port Police Station, Kakinanda stating that there was a dispute with regard to land, between A party and B party, mentioned therein, and there is a likelihood of the disputes causing breach of peace.

4. The counsel for the petitioner raises two contentions in support of his argument that the proceedings need to be quashed. The first one being that under Section 145 Cr.P.C., it is the Executive Magistrate, who has to register the case and cause enquiry into the allegations on the report given by the police officer and secondly, that, when civil proceedings are pending, the criminal proceedings shall not be continued.

5. A perusal of the FIR shows that it was registered *suo motu* on the report prepared by a police official. Hence, it is against the procedure prescribed under Section 145 Cr.P.C.

6. As regards the second contention, the counsel relied on two decisions of this Court in *BANALA SUBHASHINI v. STATE OF TELANGANA*¹ and *CHELLA VENKATA RAMANA REDDY v. STATE OF ANDHRA PRADESH*². The purport of the above decisions is that when civil proceedings are pending, the parallel proceedings under Section 145 Cr.P.C. shall not be continued. This Court relied on the observations of the Supreme Court in *RAM SMER PURI MAHANT v. STATE OF UP* [AIR 1985 SC 472], as under:

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil Court is binding on the criminal Court in a matter like the one before us.”

7. Hence, going by the ~~aforesaid~~ decisions and considering the submission of the counsel for the petitioner that a suit is pending between the parties in O.S.No.11 of 2011 on the file of the IV Additional Senior Civil Judge, Kakinanda and injunction was obtained on 07.02.2011, this Court opines that continuation of proceedings would be a sheer abuse of process of law.

The criminal petition is allowed and proceedings in Cr.No.18 of 2011 Station House Officer, Kakinada Port Police Station, Kakinanda,

¹ 2017 (2) ALT (CRL.) 310 (AP)

² 2015 (1) ALD (CRL.) 927

East Godavari District are hereby quashed against the petitioner.
As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December 4, 2017
DSK

T. RAJANI, J

