

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.10866 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the order dated 10.10.2017 passed in M.C.No.8 of 2017 by the Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Peddapuram, attaching the property in dispute by exercising power under Section 146(2) of Cr.P.C.

2. Though the petitioner raised several grounds with regard to title and possession, the counsel for petitioner drawn the attention of this Court to the show cause notice issued in compliance of Sub-section (1) of Section 145 of Cr.P.C., by the Sub-Divisional Magistrate on 20.09.2017 to both A & B parties. In the last paragraph of the notice, the Sub-Divisional Magistrate asked both A and B parties to show cause **as to** why the land to an extent of Acs.25.26 cents in Sy.No.195 of E. Gokavaram Revenue Village should not be attached under Section 146(1) Cr.P.C., until a competent civil Court/appropriate forum has determined the rights of the parties.

3. When the notice was defective, the order passed by the Sub-Divisional Magistrate is erroneous, according to the contention of the counsel for petitioner Sri P. Udaya Bhaskara Rao. .

4. Learned counsel for respondents Sri G. Vasantha Rayudu, has supported the order under challenge in all respects.

5. The proceedings under Section 145 of Cr.P.C. commences from the time when information from the police is received suspecting law and order problem in the village with regard to immovable property etc. Here, the police gave report to the Sub-Divisional Magistrate suspecting law and order problem due to disputes with regard to the landed property i.e., Acs.25.26 cents in Sy.No.195 of E.Gokavaram Village of Prathipadu Mandal, as both A and B parties are claiming possession over the said property.

6. The first step to be followed by the Executive Magistrate is under Section 145(1) of Cr.P.C. According to it, whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute is likely to cause breach of 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.

7. Thus, in view of Section 145(1) of Cr.P.C., a notice is required to be issued calling upon both 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. Instead of issuing such notice, the Sub-Divisional Magistrate issued notice calling upon A and B parties to show cause

as to why the property in dispute should not be attached as if he is proceeding to pass an order under Section 146(1) of Cr.P.C., Therefore, the procedure followed by the Sub-Divisional Magistrate is totally in contravention of Sub-section (1) of Section 145 of Cr.P.C. On this ground alone, the order impugned is liable to be set aside without touching the other merits of the case.

8. Hence, the order passed by the Revenue Divisional Officer-cum-Sub-Divisional Magistrate in M.C.No.8 of 2017 dated 10.10.2017 is hereby set aside, directing the Magistrate to issue appropriate notice strictly adhering the procedure as contemplated under the Code of Criminal Procedure afresh and pass appropriate orders after affording reasonable opportunity to both the parties.

9. Accordingly, with the above direction, the Criminal Petition is allowed.

10. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

28th November, 2017

sj