

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2903 OF 2017

JUDGMENT:

Questioning the order passed in RC/B/No/479/2017, dated 02.11.2017, by the Mandal Executive Magistrate and Mandal Tahsildar, Jaladanki Mandal, Nellore District, under Section 145 of the Code of Criminal Procedure, 1973 (for short 'Code'), prohibiting the entry of Smt. Vattikala Haritha, wife of Hazarath and her family members in an extent of Acs.2.-00 cents in Survey No.2601 of Brahmanakraka village and also Vattikala Rajendra, son of Pichayya, Sri Vattikala Raghavendra, son of Pichayya, Vattikala Hazarath and Sri Vattikala Sankaraiah in the remaining land of Acs.5.35 cents excluding the existing colony area with houses (i.e., Colony - I in Acs.3.30 cents and Colony - II in Acs.4.50 cents, making a total of Acs.7.80 cents, Government Land in Survey No.2601 Acs.13.15 - 7.80) in Survey No.2601 of Brhmanakraka Agraharam village, Jaladanki Mandal of Nellore District, Andhra Pradesh from 02.11.2017, till further orders, the revision petitioner preferred the present Criminal Revision Case under Sections 397 and 401 of the Code.

2. Heard Sri P. Ganga Rami Reddy, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the

State of Andhra Pradesh and the case is disposed of at the admission stage itself.

3. The learned counsel for the revision petitioner, in fact, entered into arena of merits, but, however, it is according to him that a suit was filed by the revision petitioner - Vattikala Haritha in O.S. No.116 of 2017 on the file of the Principal Junior Civil Judge, Kavali, seeking the relief of perpetual injunction against defendant Nos.1 to 3 therein i.e., The District Collector, The Revenue Divisional Officer and the Tahsildar, restraining them from interfering with her possession and enjoyment over the suit schedule property. The learned counsel also would submit that an interim order was passed in I.A. No.362 of 2017, ordering both the parties to maintain status quo and it has been continued from time to time which was originally passed on 14.09.2017, and once the Civil Court seizes the matter, the question of passing any order under Section 145 of the Code does not arise and, therefore, sought to set aside the order under challenge.

4. Per contra, the learned Assistant Public Prosecutor would submit that in fact, only official respondents are made as parties to the said suit but not the private parties though, in the present Criminal Revision Case, one V. Balaiah is shown as respondent No.2. It is according to him, that when the Civil Court passes status quo orders, it will not have any effect on the prohibitory order passed under Section 145 of the Code.

5. The learned counsel would place reliance on a ruling in **Rameshwar Havelia v. M/s. Asian Agro Farms India Ltd. and another**¹ for the proposition that until the civil proceedings have achieved finality, the proceedings under Section 145 of the Code as well as the attachment order passed by the Magistrate under Section 146 (1) of the Code would be certainly an abuse of process of Court. A learned single Judge of Uttarakhand High Court in the said context held thus:

“Until the civil proceedings have achieved finality, the proceedings u/s. 145 Cr.P.C. as well as the attachment order passed by the Magistrate u/s. 146(1) Cr.P.C. would be certainly an abuse of process of Court. As the matter is still sub-judice before the court of civil court of competent jurisdiction, therefore, if any party claims to be in possession of the property, then it is for that party to approach the civil court and to get the appropriate order, but in any way the proceeding u/s. 145 Cr.P.C. cannot be allowed to be continued.”

6. The learned counsel also places reliance in **Ashok Kumar v. State of Uttarakhand and others**², as to the scope of exercise of power of Executive Magistrate in an inquiry under Section 145 of the Code. The observations made by the Hon’ble Supreme Court in paragraph Nos.10 to 13 since relevant, the same are extracted thus:

“10. The ingredients necessary for passing an order Under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section

¹. 2009 (3) ALT (Crl.) 30 (NRC)

². (2013) 3 SCC 366

146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated Under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order Under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

11. We find from this case there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code 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 Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the Appellant - Ashok Kumar, whether it is legal or not, is not for the SDM to decide.

12. We also notice that the Respondent herein has filed a civil suit for injunction before Civil Judge (J.D.) Haridwar on 02.09.2009 and an application for interim injunction is also pending, on which the civil court has issued only a notice. An Amin report was called for and Amin submitted its report on 21.11.2009. 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 that there was an emergency so as to invoke the powers Under Section

146(1) to attach the property, specially, when the civil court is seized of the matter. Under such circumstances, we are inclined to set aside the order passed by the SDM dated 25.11.2009 and the order of the High court dated 27.03.2012.

13. Learned Counsel appearing for the Appellant submitted that he will not change the character of the property or create third party rights in respect of the property in question till the civil court passes final orders on the application filed by the Respondent for temporary injunction. The submission of the learned Counsel is recorded and we direct the civil court to pass final orders on the interim application filed by the Respondent for injunction. We make it clear that we have also not expressed any final opinion on the contentions raised by the learned Counsel. We have however found that no ground exists to attach the property Under Section 146 Cr.P.C.”

7. In the present case also, there is a civil suit pending, though not respondent No.2 herein is not a party to the civil proceedings, but it is open to either party or respondent No.2 herein to join in the civil proceedings by impleadment. In view of the law declared by the Hon'ble Supreme Court since the Civil Court seized the matter, certainly, the impugned order ought not to have been passed. Admittedly, the civil suit was instituted prior to the issue of proceedings under Section 145 of the Code. Even the prohibitory order under challenge does not disclose that there was such emergent situation that the order under Section 145 of the Code was absolutely

inevitable. In such an event, the Criminal Revision Case is to be allowed.

8. The present Criminal Revision Case is, accordingly allowed setting aside the order passed in RC/B/No/479/2017, dated 02.11.2017, by the Mandal Executive Magistrate and Mandal Tahsildar, Jaladanki Mandal, Nellore District, Andhra Pradesh, under Section 145 of the Code, directing the parties to get their grievance redressed before the Civil Court.

9. It is also made clear that no positive findings have been recorded and the Civil Court to dispose of the suit uninfluenced by any of the observations made herein.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

November 28, 2017.

Mgr