

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 137 OF 2018

Manjunath Pujari	...	Petitioner
Versus		
Shrinivas Nayak & Another	...	Respondents

Shri Dharmanand R. Vernekar, Advocate for the Petitioner.

CORAM:- C.V. BHADANG, J.

DATE:- 3rd AUGUST 2018

ORAL ORDER:

Heard Shri Vernekar, the learned Counsel for the petitioner.

2. By this petition, the petitioner, is challenging the preliminary order dated 16.07.2018, passed by the Deputy Collector and the Executive Magistrate, Panaji in a proceeding under Section 145 of Cr.P.C.

3. It is contended by Shri Vernekar, the learned Counsel for the petitioner that the police report does not spell out any possibility of breach of peace, which is the basic requirement for initiating the proceedings under Section 145 of Cr.P.C. It is submitted that the Magistrate is required to conduct an inquiry under Section 145(4) of Cr.P.C., if necessary.

4. Reliance is placed on the decision of the Supreme Court in the case of **Ram Sumer Puri Mahant Vs. State of U.P. & Others, AIR 1985 SC 472**, in order to submit that when parallel civil litigation is pending between the parties, before the competent Civil Court, there is no occasion for initiating the proceedings under Section 145 of Cr.P.C. It is pointed out that Timeline Media Private Limited, of which, the petitioner is one of the Directors, has filed a civil suit against the respondents, which is pending.

Reliance is also placed on the decision of this Court in the case of **Shri Binoy Pramodkumar Shah Vs. Mr. Kalusingh Homersingh Rajput & Another** (Writ Petition No. 403 of 2004 decided on 14.12.2017) and **Shaikh Wajid Abdul Gani Vs. The State of Maharashtra & Others**, (Criminal Writ Petition No. 251 of 2014 decided on 05.08.2014) and the decision of the Madras High Court in the case of **Thamaralammal & Another Vs. The Executive Magistrate cum Revenue Divisional Officer, Chengalpattu & Another, 2007 1 MLJ(CRI) 928**, in order to submit that there was no occasion for initiating proceedings under Section 145 of Cr.P.C.

5. I have carefully considered the circumstances and the submissions made. At this stage, all that, the petitioner is

asked is to appear and file reply. It is not a ground made out by the petitioner that the Magistrate has not passed the preliminary order, as in the case of **Thamaralammal** (supra), before the Madras High Court. That apart, the challenge before the Madras High Court was to the final order passed by the Executive Magistrate. It is now well settled that the Magistrate can initiate proceedings, under Section 145 on a subjective satisfaction, about the existence of a possibility of breach of the peace.

6. In the case of **Ram Sumer Puri Mahant** (supra), the Hon'ble Apex Court has *inter alia* held that when the civil dispute between the parties is “adjudicated”, there is hardly any justification for initiating a parallel proceeding under Section 145 of Cr.P.C. This is on account of the fact that the decree of the Civil Court is binding on the Criminal Court, in a dispute of the present nature. In the present case, as yet, there is no decree passed by the Civil Court, deciding the rights of the parties.

7. In the decision, in the case of **Shaikh Wajid Abdul Gani** (supra), before the Division Bench of this Court, the prayer was for quashing of the proceedings and not a challenge

to the order, simplicitor, issuing notice and asking the petitioner to remain present. In that view of the matter, I do not find any reason to interfere with the impugned order, at this stage. It would be open to the petitioner to file a reply before the Magistrate and to take all such defences, as may be available, including a defence to show that there is no likelihood of breach of peace and therefore, there is no need to initiate proceedings under Section 145 of Cr.P.C. If a reply is filed, raising such contentions, the Magistrate shall decide the same on its own merits and in accordance with law and without being influenced by the observations herein. Subject to this, the Criminal Writ Petition is disposed of. Needless to mention that if, the Magistrate refuses to drop the proceedings and decides to proceed, the Magistrate, will have to hold inquiry under Section 145(4) of Cr.P.C.

8. All concerned to act on the basis of an authenticated copy of the order.

C.V. BHADANG, J.

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