

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.746 of 2018
in
Crl.M.P.No.8611 of 2018

Santhi Petitioner

Vs.

1.The Inspector of Police,
B2, Tiruvallur Taluk Police Station,
Tiruvallur District.

2.The Sub Divisional Magistrate &
Revenue Divisional Officer,
Tiruvallur.

3.Bhama Respondents

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., 1973, to set aside the order passed by the 2nd respondent in Na.Ka.No.3182/2017/A1, dated 04.04.2018, by the Sub Divisional Magistrate-cum-Revenue Divisional Officer, Thiruvallur, under Section 145 of Cr.P.C., in respect of tenancy dispute, based on the FIR in Cr.No.722 of 2017, on the file of the first respondent.

For Petitioner : Mr.N.Ramesh

For Respondents : Mr.G.Harihara Arun Soma Sankar
Government Advocate for R1 and R2
Mr.K.Sankaran for R3

ORDER

This Criminal Revision Case is directed against the order dated 04.04.2018, passed by the Sub Divisional Magistrate-cum-Revenue Divisional Officer, Thiruvallur, the 2nd respondent, in Na.Ka.No.3182/2017/A1.

2.The facts which give rise to the present Revision Petition are stated hereunder:

(i)According to the petitioner she is the owner of Industrial Plot bearing No.6, developed Plots Industrial Estate, Kakkalur, Thiruvallur District. She was running the business in the name and style of 'Royal Engineering Company', which involved in the manufacturing of moulded electrical and auto components. The petitioner has also obtained licence from the department of Commerce, Government of Tamil Nadu, under the category of Micro Enterprise. The 3rd respondent approached the petitioner for taking the factory with machineries on lease and on the basis of mutual understanding, the factory premises was leased out to the 3rd respondent from 2.8.2016 on a monthly rent of Rs.5 lakhs. The 3rd respondent appears to have paid an advance of Rs.60 lakhs to the petitioner.

(ii)It appears that the 3rd respondent had defaulted in payment of monthly instalments from August 2016 onwards and due to mishandling of the 3rd respondent in running the factory, the machinery became dysfunctional and ultimately, the 3rd respondent abandoned the factory with its machineries, in the month of July 2017. According to the petitioner, the 3rd respondent owes several lakhs of rupees towards monthly rent.

(iii)Since the 3rd respondent owes considerable amount by way of arrears of rent, the petitioner has been demanding payment of arrears of rent from the 3rd respondent. In order to evade payment, the 3rd respondent attempted to trespass into the premises of the factory, when the factory had been taken back by the petitioner and had been operated by the petitioner herself.

(iv)In the above circumstances, the petitioner had filed suit for bare injunction, before the City Civil Court, Chennai, in O.S.No.5421 of 2017. As a counter blast, the 3rd respondent has also filed Suit in O.S.No.121 of 2017.

(v)In the meanwhile, it appears that the 3rd respondent had approached the first respondent police alleging that she is being prevented from entering the factory premises. On the basis of the action taken by the first respondent, by registering FIR in Crime No.722 of 2017, the matter was referred to the second respondent for initiating action under Section 145 of Cr.P.C.

(vi)The second respondent, after reference to her, has issued notice on 06.12.2017 to the petitioner summoning her to appear on 07.12.2017. The petitioner appeared before the second respondent on 07.12.2017 and produced all the documents in her possession and according to the petitioner, without conducting any enquiry and without reference to the documents submitted by her, the second respondent passed an order on 04.04.2018 directing that status-quo has to be maintained in respect of the seal of the company; no patta transfer has to be effected in

respect of the company and no registration should be done in respect of the company. The said order passed by the second respondent under Section 145 of Cr.P.C., is put to challenge in the present revision petition.

3.The learned counsel appearing for the petitioner would vehemently contend that the second respondent has exceeded her limit in passing order under Section 145 of Cr.P.C., particularly when Civil Suits are pending in regard to the dues payable by the 3rd respondent to the petitioner. According to the learned counsel, the second respondent cannot invoke her power under Section 145 of Cr.P.C., since the dispute between the petitioner and the 3rd respondent falls within the realm of civil dispute, which cannot be brought within the ambit of Section 145 Cr.P.C. Even otherwise, the dispute is pending before the Civil Court and there was no breach of peace at all for the Executive Magistrate to invoke her power under Section 145 Cr.P.C. Section 145 Cr.P.C. is an emergency power, which could be invoked only in such circumstances, in which there were existence of facts of breach of peace.

4.The learned counsel for the petitioner draws the attention of this Court to the impugned order passed by the second respondent and submits that the second respondent had invoked her powers under Section 145 Cr.P.C., on the basis of the submission made by the 3rd respondent that some amounts were due from the petitioner to the 3rd respondent. The submissions of the 3rd respondent were also recorded by the second respondent, which would demonstrate that the dispute was purely civil in nature and the second respondent, in order to favour the 3rd respondent, has misused the power vested under Section 145 Cr.P.C. According to the learned counsel, the order passed by the second respondent ex facie cannot be countenanced both on facts and law.

5.The learned counsel for the respondents 1 and 2 submits that power is available under Section 145 Cr.P.C., for the Executive Magistrate to act and such power was exercised after consideration of materials placed on record.

6.On behalf of the 3rd respondent, Mr.K.Sankaran, learned counsel appeared and he would submit that there is a dispute between the petitioner and the 3rd respondent in regard to the lease executed by the petitioner in favour of the 3rd respondent in respect of the subject factory and its premises. Even the 3rd respondent did not whisper anything with regard to the breach of peace in respect of the dispute between the petitioner and the 3rd respondent.

7.From the submissions made on behalf of the 3rd respondent, this Court can conclusively come to a decision that the dispute between the petitioner and the 3rd respondent is nothing but a civil dispute, which cannot be brought within the ambit of Section 145 Cr.P.C.

8.Section 145 Cr.P.C., can be invoked only when there is a dispute as to the immovable property, which is likely to cause breach of peace and in this case, the ownership of the property is not in dispute at all. When such is the position, this Court is unable to appreciate as to how the second respondent can invoke the power vested in her under Section 145 Cr.P.C., in the present case. The civil Suit, filed by the 3rd respondent, as against the petitioner is also pending and when the civil Suit is pending, it is not open to the second respondent to invoke the power vested with the authority under Section 145 Cr.P.C.

9.Moreover, even on merits, it has to be seen that no instances were pointed out in regard to the breach of peace in view of the dispute between the petitioner and the 3rd respondent, except referring to some vague instance, without any supporting materials. Obviously, the intention of the second respondent was to bring the subject dispute within the purview of Section 145 Cr.P.C., in order to favour one party.

10.This Court, after perusing the impugned order and the materials placed on record, is of the clear view that the second respondent has abused her position by invoking the power vested in her under Section 145 Cr.P.C. A private dispute between the petitioner and the 3rd respondent is sought to be converted into one as a public issue by the second respondent, for partisan ends. The Court strongly deprecates the conduct of the second respondent in passing such sweeping order holding that there would not be any change of patta in respect of the subject property and no registration could take place in respect of the property etc., as if there was a title dispute between the parties. In any case, it is not within the domain of the second respondent to decide the title dispute. All that the second respondent must consider is about the breach of peace and in the instant case, such emergency situation for upholding public peace was non-exist, to say the least.

11.In view of the partisan conduct of the second respondent and also misuse of her official position as Executive Magistrate, this Court is constrained to impose exemplary cost of Rs.30,000/- (Rupees Thirty Thousand only) on the second respondent for locking the factory premises and not allowing the petitioner for operating the factory for so many months and for causing grave hardship to the petitioner. Accordingly, the

second respondent is directed to pay cost of Rs.30,000/- (Rupees Thirty Thousand only) to the petitioner from her own earning within a period of two weeks from the date of receipt of copy of this order.

In view of the above conclusion, the impugned order passed by the second respondent is hereby set aside and the revision petition is allowed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Inspector of Police,
B2, Tiruvallur Taluk Police Station,
Tiruvallur District.

2.The Sub Divisional Magistrate &
Revenue Divisional Officer,
Tiruvallur.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Ramesh, Advocate, S.R.No.81897

+1cc to M/s.K.Sankaran, Advocate, S.R.No.81939

CNR(CO)
SSM(02/01/2019)

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