



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

W.P.(MD) No.495 of 2018andWMP(MD) Nos.495 and 496 of 2018

T.Vellathurai

... Petitioner

Vs.

1.The Revenue Divisional Officer - cum-,
Sub Divisional Magistrate,
Tenkasi,
Tirunelveli District.

2.Murugan

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for records pertaining to the impugned order passed by the first respondent in Na.Ka.No.A2/C.C.3/145 Ku.Vi.Mu.Sa./2017 dated 24.10.2017.

For Petitioner

: Mr.S.Vinayak

For R1

: Mrs.J.Padmavathy Devi

Special Government Pleader

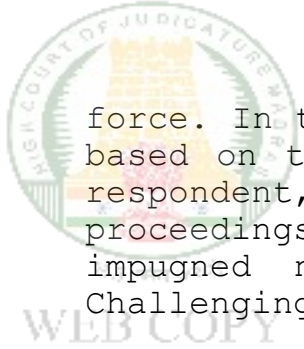
For R2

: Mr.P.Saravanakumar

ORDER

This writ petition has been filed challenging the preliminary notice issued under Section 145(1) Cr.P.C., by the first respondent/Revenue Divisional Officer - cum - Sub Divisional Magistrate, Tenkasi.

2.According to the petitioner, the property comprised in Survey No.69/1E and 69/1F, Kaluneerkulam Village, Alangulam Taluk, Tirunelveli District is a ancestral property of the petitioner's family and they are in possession and enjoyment of the same and they have also dug a well in the above said property and taking water for agricultural purpose. The second respondent, who is a neighbour of the petitioner, earlier, filed a suit in respect of the above said property in O.S.No.153 of 2017 on the file of the Principal District Munsif Court, Tenkasi, seeking declaration and permanent injunction. Pending suit, the second respondent has filed an application in I.A.No.438 of 2017 seeking interim injunction, restraining the petitioner and his family members from taking water from the well situated in the above said survey number. The trial Court allowed the application and granted interim injunction. Aggrieved over the same, the petitioner has filed a miscellaneous appeal in C.M.A.No.5 of 2017 before the Sub Court, Tenkasi. The appellate Court stayed the order passed in I.A.No.438 of 2017 and stay order is still in



force. In the meantime, the Inspector of Police, Veerakeralamputhur, based on the complaints given by the petitioner as well as second respondent, referred the matter to the first respondent to initiate proceedings under Section 145 Cr.P.C. Pursuant to the same, now, the impugned notice has been issued under Section 145(1) Cr.P.C. Challenging the same, this writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that already the second respondent has approached the civil Court and suit is pending. Pending civil proceedings, the first respondent has initiated a parallel proceedings under Section 145 Cr.P.C., which is not permissible under law. Apart from that, even in the impugned order passed under Section 145(1) Cr.P.C., nothing has been stated whether the first respondent has applied his mind and satisfied that there is likelihood of breach of peace and the first respondent has also no jurisdiction to invoke the provision of section 145(1) Cr.P.C. Hence, the impugned order is liable to be set aside.

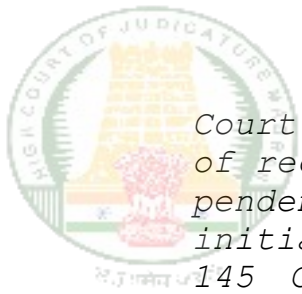
4.Per contra, the learned counsel appearing for the second respondent submitted that even though civil suit is pending between the parties, only pending interim orders, there is a dispute between the petitioner and second respondent. In the above circumstances, both parties have given complaint before the Inspector of Police, Veerakeralamputhur and the Inspector of Police, after being convinced that the dispute will lead to breach of peace and tranquility, referred the matter to the first respondent and the first respondent after being satisfied that there is likelihood of breach of peace, issued the preliminary notice under Section 145(1) Cr.P.C. The learned counsel further submitted that it is only a preliminary notice issued under Section 145 Cr.P.C., and it is always open to the petitioner to appear before the first respondent and submit his objections and hence, he cannot challenge the preliminary notice issued by the first respondent.

5.I have considered the rival submissions made on either side and perused the materials carefully.

6.Admittedly, a civil suit is pending between the parties and earlier, the trial Court has also granted an order of interim injunction in favour of the second respondent herein and in an appeal, the trial Court order has been stayed and order of stay is still in force. In the above circumstances, when civil litigation is pending between the parties in respect of the above property, the first respondent cannot initiate parallel proceedings under Section 145 Cr.P.C. It will only leads to multiplicity of litigations.

7.The Hon'ble Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. and others, [AIR 1985 SCC 472] has held as follows:

"When a civil litigation is pending for the same property wherein the question of possession is involved and the parties are in a position to approach the civil



Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute, there is no justification for initiating a parallel criminal proceeding under section 145 Cr.P.C., Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Therefore, the parallel proceeding should not continue and the order of the Magistrate directing initiation of such a proceeding under Section 145 Cr.P.C., must be quashed."

8. In another Judgment in Mahar Jahan and others Vs. State of Delhi and others [2004 (13) SCC 421] the Hon'ble Supreme Court has held as follows:

"... Inasmuch as the parties are already before the civil court, it is proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit.

Therefore, the criminal proceedings initiated under section 145 Cr.P.C., are directed to be quashed...."

9. In the above circumstances, when a civil dispute is pending between the parties and some interim orders have been passed by the civil Court, in that event, the first respondent cannot initiate parallel proceedings by invoking Section 145 Cr.P.C. Hence, the impugned notice issued by the first respondent is liable to be set aside.

10. In fine, this writ petition is allowed and the impugned order passed by the first respondent on 24.10.2017 is set aside. No costs. Consequently, WMP(MD)Nos.495 and 496 of 2018 are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

The Revenue Divisional Officer,
Sub Divisional Magistrate, Tenkasi, Tirunelveli District.
+One cc to The Special Government Pleader, SR.No.43679
+One cc to M/s.S.Vinayak, Advocate, SR.No.43368
+One cc to Mr.P.Kalaiyarasi Bharathi, Advocate, SR.No.43451
mj