

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.113 OF 2018

ORDER:

This criminal petition under Section 482 Cr.P.C is filed to quash the notice issued by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Rajendranagar Division at Attapur in Case No.L&O/1506/2017 dated 26.09.2017, on the ground that, if any order is passed against the petitioners herein, it would lead to multiplicity of the proceedings.

Learned counsel for the petitioners also referred the suit O.S.No.1318 of 2017 pending before the III Additional District Judge, Ranga Reddy Court at L.B. Nagar, Hyderabad and appeal A.S.No.749 of 2017 against the decree and judgment passed in the suit. Further, it is submitted that, in A.S.M.P.No.1826 of 2017 in A.S.No.749 of 2017 an interim injunction was granted on 29.08.2017 and therefore, if any order is passed, it would lead to multiplicity of the proceedings and requested to quash the notice issued under Section 145(1) Cr.P.C.

During hearing, learned counsel for the petitioners contended that, when civil suits are pending, the Sub-Divisional Magistrate-cum-Revenue Divisional Officer is incompetent to pass an order, since it would lead to unnecessary complications. Learned counsel for the petitioners further relied on two judgments of this Court in **Mohd. Shafiuddin General Secretary (Managing Committee, Masjid Asar-e-Shareef Rahmania, Tallagadda**

Hyderabad and another v. State of A.P. and others¹ and **Balmukund Gupta and another v. State of A.P. and others²**.

Relying on the principles laid down in the above judgments, learned counsel for the petitioners requested this Court to quash the notice referred supra, issued by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer.

Section 145 Cr.P.C prescribed the procedure where dispute concerning land or water is likely to cause breach of peace and whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the 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.

Therefore, in exercise of power conferred under Subsection (1) of Section 145 Cr.P.C, the notice under challenge was issued by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer. Even, as per Section 145(1) Cr.P.C and the impugned notice, the petitioners can appear before the Court below and file their written statement as to their possession over the property or any claim of any of the items referred supra. The petitioners appeared before the Sub-Divisional Magistrate-cum-Revenue Divisional Officer and

¹ 2006 (3) ALT (CrL.) 374 (A.P.)

² 2002 (1) ALT (CrL.) 464 (A.P.)

filed written statement and it is pending for passing final orders, as permitted under Section 145 Cr.P.C.

No doubt, suit and appeal are pending before the concerned Courts. But, it is not known whether it relates to the same property or otherwise. Even otherwise, the petitioners are at liberty to bring it to the notice of the Sub-Divisional Magistrate-cum-Revenue Divisional Officer about pendency of the suits, if any, pertaining to the dispute in the present notice and the Sub-Divisional Magistrate-cum-Revenue Divisional Officer is bound to pass appropriate order considering the material before the Court below, including pending civil litigation etc. When a notice was issued and no final order was passed, challenging a notice which is preliminary in nature, cannot be quashed by this Court, since the enquiry is pending before the Sub-Divisional Magistrate-cum-Revenue Divisional Officer.

Learned counsel for the petitioners relied on the two judgments referred supra. In **Mohd. Shafiuddin**¹ case, this Court held that, when a more comprehensive civil suit is pending in respect of the same subject matter and between the parties, proceedings under Section 145 Cr.P.C before an Executive Magistrate are not maintainable. In **Balmukund Gupta**² case, the same principle is laid down by this Court.

The law laid down by this Court in the above two judgments is not in quarrel. But, if any final order is passed by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, this Court can exercise such power and at this stage of issuing notice, quashment by exercising power under Section 145(1) Cr.P.C, this

Court cannot quash the notice. If, for any reason, final order is passed under Section 145 Cr.P.C, the petitioners are at liberty to approach this Court or any appropriate Court, in accordance with law.

With the above observation, the criminal petition is dismissed at the admission stage.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:04.01.2018

Note: Issue copy by 05.01.2018
b/o
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