

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.1893 OF 2018

ORDER:

This revision is arising out of proceedings, dated 05.06.2018 passed under Section 145 Cr.P.C. by the Mandal Executive Magistrate & Tahsildar, Enkoor.

2. The revision petitioner claims to be the owner of the suit schedule property. She filed a suit O.S.No.61 of 2017 on the file of the Sub-Divisional Magistrate & Special Assistant Agent (Mobile Court), Bhadrachalam. She also filed I.A.No.70 of 2017 for grant of temporary injunction. The Sub-Divisional Magistrate has passed order restraining defendants from interfering with the peaceful possession and enjoyment of the petitioner over the petition schedule property until further orders. The said order is dated 14.03.2017.

3. Subsequently, the Mandal Executive Magistrate and Tahsildar, Enkoor, has issued proceedings under Section 145 Cr.P.C., which reads as follows:

“The Sub-Inspector of Police, P.S. Enkoor, vide his letter Cr.No.205/SI-1-2/2018, dated 03.06.2018 has requested for promulgation Order U/section 145 Cr.P.C. Since it is likely to cause breach of peace due to dispute raised in between Sk.Abdul Gaffoor, s/o Hussain, R/o Enkoor and Mandapati Ramesh Raju, R/o Tallada (v) regarding ownership of land in Sy.No.108/A/1 situated in Medepalli Revenue Village of Enkoor Mandal.

In this issue, it appears to me, on the grounds duly recorded, that a dispute likely to induce a breach of the peace, existed between Sk.Abdul Gaffoor, s/o Hussain R/o Enkoor and Mandapati Ramesh Raju, R/o Tallada (v) regarding ownership of land in Sy.No.108/A/1 situated in Medepalli Revenue Village of Enkoor Mandal, situated within my local jurisdiction. Therefore, I do strictly forbid any disturbance of possession of land by the both parties until the disposal of court case by the competent court. Subject to out come of the civil court order, further proceedings will be issued.”

4. The proceedings of the Mandal Executive Magistrate reveals that there is likely to cause breach of peace due to dispute raised between Sk. Abdul Gaffoor and Mandapati Ramesh Raju in respect of Sy.No.108/A/1 situated in Medepalli Revenue Village of Enkoor Mandal. The learned Mandal Executive Magistrate comes to a conclusion that there is likely to induce breach of peace in view of the dispute over the said property. Both parties were restrained till disposal of the case by the competent Court. The order under Section 145 Cr.P.C. is subject to outcome of the order of the Civil Court.

5. Aggrieved by the impugned order passed by the Mandal Executive Magistrate, the petitioner approached this Court for setting aside the same.

6. The contention of the learned counsel for the petitioner is that the petitioner has obtained an order from the competent Civil Court in her favour. The Mandal Executive Magistrate has passed the proceedings under Section 145 Cr.P.C., which are not in accordance with law.

7. Learned counsel for the petitioner relied on a judgment of this Court in case of **BANALA SUBHASHINI V STATE OF TELANGANA AND OTHERS**¹, wherein at para 9, it was held as follows:

“The sum and substance of said expressions in one line including by showing the creases from the observations in the expression in *Jhummamal* (supra) that even Sections 145 to 147 proceedings initiated before the filing of civil suit those cannot be continued after civil Court is seisen of the matter. After filing of civil suit, the question of initiation of said proceedings in relation to the property covered the lis does not arise. What the law says further from the expressions is that, the Executive Magistrate cannot pass any order, once there is anything to say that *prima facie*, any person in possession and once there is a civil matter pending.”

¹ 2017 (2) ALT (CRL) 310 (A.P.)

8. In the light of the ratio laid down in the above judgment, it is obvious that when a civil matter is pending before competent Court and it has passed an injunction order in favour of the petitioner herein, no proceedings under Section 145 Cr.P.C. can be initiated to restrain the petitioner from entering into her own land. On the other hand, a perusal of the order of M.R.O. reveals that the order under Section 145 Cr.P.C. is subject to the result in the civil suit. As there was likelihood of breach of peace, the M.R.O. passed orders under Section 145 Cr.P.C. The order passed by the civil Court in favour of the petitioner appears to have not considered in 145 Cr.P.C. orders. The order passed by the Mandal Executive Magistrate is totally in conflict with the order passed by the civil Court which has granted injunction in favour of the petitioner, on considering the *prima facie* case. The order passed by the Civil Court would prevail as it is a Judicial order. Hence, the order of the Mandal Executive Magistrate is liable to be set aside.

9. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 05.06.2018 passed by the Mandal Executive Magistrate & Tahsildar, Enkoor. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 28-11-2018

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