

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9438 OF 2018

ORDER:

This petition is filed under Section 482 of Cr.P.C. by the petitioners-accused Nos. 1 to 4 to quash the proceedings against them in crime No. 22 of 2018 of Chaitanyapuri Police Station, Rachakonda, registered for the offence punishable under Section 145 of Cr.P.C.

2. Basing on the complaint sent by the Station House Officer, Chaitanyapuri Police Station, Rachakonda-respondent No. 2 alleging that there is a dispute over open land/open plot No. 61 admeasuring 2166 square yards in survey No. 7 situated at Green Hills Colony, Saroor Nagar Village & Mandal, R.R. District, between two groups and that the two groups are filing complaints against each other and thereby creating breach of peace and tranquility in the area and also creating law and order problem, the above crime has been registered.

3. The present petition is filed to quash the proceedings on the ground that police have no source of authority to register crime under Section 145 of Cr.P.C. and in the absence of commission of any offence, registration of crime is illegal and requested to quash the proceedings against the petitioners.

4. At the hearing, Sri Metta Chandra Shekhar Rao, learned counsel for the petitioners, while reiterating the grounds urged in the petition, has placed reliance on the judgment of a Larger Bench of the Apex Court in ***Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and others***¹ in support of his contention.

5. Learned Public Prosecutor (T.S.) has opposed the petition.

¹ 1970 (3) SCC 746

6. As seen from the complaint lodged by respondent No. 2, there are disputes between two groups and they are creating law and order problem. In such case, the procedure to be followed by the police is to request the Executive Magistrate to initiate proceedings under Section 145 of Cr.P.C. According to Section 145 of Cr.P.C., 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. Thus, under Section 145 of Cr.P.C., Executive Magistrate is competent to issue necessary orders after recording satisfaction about likelihood of causing breach of peace *etc.*, and pass appropriate orders. Instead of making such report to Executive Magistrate, respondent No. 2 submitted report to the Station House Officer who in turn registered the above crime though it is not a criminal offence and it is nothing but abuse of process of law. In **Madhu Limaye** (1st *supra*), the Apex Court observed as follows:

"In this connection, it was argued by Mr. Garg that, if Section 117 (3) is interpreted as permitting a Magistrate to direct furnishing of bonds for keeping the peace and to order detention in default without any evidence being obtained in the course of the inquiry, the Magistrate may keep on adjourning the hearing of the inquiry under Section 117 (1) and, thus, keep the person in detention for long periods without giving him the opportunity of showing that there is no justification for orders being made against him. In my opinion, the validity of a provision of this nature is not to be judged from the likelihood of the abuse of the power by the Magistrate. If the Magistrate, after making orders under Section 117 (3), unnecessarily postpones the inquiry, he would, in my opinion, be only

abusing his powers, but will be acting contrary to the mandate of the law contained in Section 117 (1) itself which, as I have indicated above, requires that the Magistrate must proceed to enquire into the truth of the information without unnecessary delay. In cases where the power is abused and the hearing is unnecessarily delayed, the proceedings would be liable to be quashed and the person set at liberty on the ground that the Magistrate has not complied with the requirements of Section 117 (1). On the other hand, if the Magistrate does comply with Section 117 (1) by continuing the proceedings of inquiry expeditiously and without any delay, I do not think it can be said that the detention of the person, against whom the proceedings are being taken, is not a reasonable restriction on his personal liberties when the Magistrate has already found that immediate measures are necessary for prevention of breach of the peace and the person concerned has defaulted in furnishing bonds to keep the peace during the pendency of the inquiry."

7. It is also contended by learned counsel for the petitioners that when civil dispute is pending between the parties, issue of proceedings under Section 145 of Cr.P.C. is a serious illegality and in support of his contention, learned counsel has placed reliance on the judgment of the Apex Court in **Ram Sumer Puri Mahant Vs. State of U.P. and others**², wherein the Apex Court held that

"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 of 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 of Cr.P.C. must be quashed."

In the case on hand, Magistrate did not initiate any proceedings but the crime has been registered by the police which is nothing but abuse of process of law circumventing the powers of the police. It is an admitted fact that civil dispute is pending before competent civil Court and in such case, in view of the law

² (1985) 1 SCC 427

declared by the Apex Court in **Ram Sumer Puri Mahant** (2nd *supra*), the proceedings even if pending before Executive Magistrate are liable to be quashed. Since police have no power to register crime under Section 145 of Cr.P.C., the proceedings are liable to be quashed.

8. The criminal petition is accordingly allowed quashing the proceedings against the petitioners-accused Nos. 1 to 4 in crime No. 22 of 2018 of Chaitanyapuri Police Station, Rachakonda. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 05-09-2018.

JSK

M.SATYANARAYANA MURTHY, J.

