

THE HON'BLE JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9555 OF 2018

ORDER:

This petition is filed by the petitioner under Section 482 Cr.P.C., assailing the order, dated 17.08.2018, in Roc.F/164/2018, made under sub-section (1) of Section 145 Cr.P.C. by the 2nd respondent-Mandal Executive Officer and Tahsildar, Tirupathi Urban, Tirupathi, Chittoor District

2. The 2nd respondent-Mandal Executive Officer and Tahsildar, Tirupathi Urban, initiated proceedings on the basis of the report of the Sub Inspector of Police, Alipiri Police Station, Tirupathi against both 'A' and 'B' parties in Roc.F/164/2018, directing 'A' and 'B' parties to promulgate the orders under Section 145 Cr.P.C prohibiting the entry and occupation of the house bearing D.No.6-1-65/1/1, Sripuram Colony, K.T. Road, Tirupathi until further orders.

3. In the present petition, it is contended that a notice as required under sub-section (1) of Section 145 Cr.P.C was not issued calling upon both the parties to appear before him. The order was passed without following the procedure contained under Section 145 Cr.P.C. and that too suit in O.S.No.536 of 2015 filed by the 3rd respondent for declaration of title and consequential permanent injunction was decreed and O.S.No.58 of 2018 filed by the 3rd respondent against the petitioner for injunction is pending on the file of the V Additional District Judge, Tirupathi, and therefore, initiating proceedings during the pendency of the civil Suit is illegal and hence, prays to quash the impugned order.

4. During the course of hearing, learned counsel for the petitioner while re-iterating the contentions drawn attention of this Court the judgment of this Court reported in **SHAIK LIYAQAT AND OTHERS V STATE OF TELANGANA REP. BY ITS PUBLIC**

PROSECUTOR, HIGH COURT AT HYDERABAD AND ANOTHER ¹ and contended that in the absence of any notice as contemplated under Section 145 (1) Cr.P.C., passing of prohibitory order directing both the parties to enter and occupy the property in dispute, which is the subject matter of civil suits, is illegal and requested to pass appropriate order.

5. On the other hand, learned Public Prosecutor opposed the petition.

6. As seen from the order under challenge, the Sub Inspector of Police, Alipiri Police Station, gave a report with a request to initiate proceedings under Section 145 Cr.P.C. as there is law and order problem due to rival claim by both parties over the house bearing D.No.6-1-65/1/1, Sripuram Colony, K.T. road, Tirupathi.

7. According to Section 145 (1) 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 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.

8. Instead of issuing notice after recording satisfaction as required under Section 145 (1) Cr.P.C., the 2nd respondent directly passed prohibitory order restraining both the parties from entry and occupation of the house bearing No.6-1-65/1/1. This order is passed under Section 145 (4) Cr.P.C., but not under Section 145 (1) Cr.P.C. This Court in *Shaik*

¹ 2017(1) ALT (CRL.) 312 (A.P.)

Liyaqat case (referred supra) held that failure to adhere to Section 145 (1) Cr.P.C. vitiates the order and quashed the order passed by the Executive Magistrate. In another judgment reported in **RAM SUMER PURI MAHANT V STATE OF U.P. AND OTHERS**², it is held that when a civil suit is pending with regard to the same property, the proceedings under Section 145 (1) Cr.P.C. are not maintainable. In view of the law declared by the apex Court in *Ram Sumer Puri* (referred supra), the order under challenge is illegal and irregular and thereby, liable to be quashed.

9. Accordingly, the Criminal Petition is allowed quashing the order, dated 17.08.2018, in Roc.F/164/2018, made under sub-section (1) of Section 145 Cr.P.C. by the 2nd respondent-Mandal Executive Officer and Tahsildar, Tirupathi Urban, Tirupathi, Chittoor District. However, it is left open to both 'A' and 'B' parties thereon to agitate their rights pending litigation before the competent civil Court. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

DATED: 07-09-2018.
Hsd

M.SATYANARAYANA MURTHY, J

² (1985) 1 SCC 427