

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10883 OF 2018

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 01.05.2018 passed in M.C.No.36 of 2018 by the Tahsildar and Mandal Executive Magistrate, Atreyapuram restraining both the parties from entering into the subject land until further orders to maintain the public peace and tranquility in the village.

The contention of the petitioner is that he approached the civil Court by filing a Civil Suit for appropriate relief of permanent injunction and to restrain the defendants therein and their henchmen from entering into the land and the same is pending for adjudication. In view of the pendency of civil suit, the proceedings under Section 145 of Cr.P.C. are not maintainable and requested to pass appropriate orders quashing the order dated 01.05.2018 passed in M.C.No.36 of 2018 by the Mandal Executive Magistrate, Atreyapuram.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition.

Learned Public Prosecutor for the State of Andhra Pradesh opposed the petition.

As seen from the order under challenge dated 01.05.2018, both parties were restrained from entering into the property to maintain public peace and tranquility. But certain procedure is prescribed under Section 145 of Cr.P.C. According to it, notice is required to be issued to both parties requiring them to appear

before the Mandal Executive Magistrate and file their defence, if any, along with the documents and after issuing such notice the Mandal Executive Magistrate is competent to pass appropriate orders as per clauses (2) and (3) of Section 145 of Cr.P.C. The order is silent with regard to compliance of Section 145 (1) of Cr.P.C. On this ground alone, the order is vitiated and liable to be quashed.

The other contention raised before this Court is that when civil suit is pending, the proceedings under Section 145 of Cr.P.C. cannot be maintained.

Undisputedly, petitioner filed a civil suit O.S.No.36 of 2018 is pending on the file of Principal Junior Civil Judge, Kothapeta, for grant of permanent injunction. He also filed an interlocutory application under Order XXXIX Rules 1 and 2 of Cr.P.C. for grant of ad interim injunction, which is pending before the Court for adjudication.

When the civil suit is pending with regard to the same property, the proceedings under Section 145 of Cr.P.C. cannot be maintained (vide: **Ram Sumer Puri Mahant v. State of U.P.**¹). The same principle was reiterated by the Apex Court in “**Amresh Tiwari v. Lalta Prasad Dubey**”²

Therefore, taking into consideration the facts and circumstances of the case, I find that the order dated 01.05.2018 passed in M.C.No.36 of 2018 by the Tahsildar and Mandal Executive Magistrate, Atreyapuram is illegal and the same is liable to be quashed.

¹ AIR 1985 SC 472

² AIR 2000 SC 1504

In the result, the petition is allowed. The order dated 01.05.2018 passed in M.C.No.36 of 2018 by the Tahsildar and Mandal Executive Magistrate, Atreyapuram is hereby quashed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

11.10.2018
Ksp

