

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2021

Delivered on :
28.04.2021

CORAM ::

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.OP.No.5409 of 2021
and
M.P.No.3500 of 2021

1.Ramachandran
2.Keerthisri
3.Karthiekyan
4.Murugesan
5.Ilayaraja
6.Manonmathi

.... Petitioners

Vs.

1.The Executive Magistrate-cum-
Revenue Divisional Officer
Coimbatore North,
Coimbatore.

2.The Inspector of Police
E-3, Saravanampatti Police Station
Coimbatore District.

3.Balakrishnan
4.Akash
5.Naveen Kumar
6.Arun

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the impugned notice issued in Na.Ka.No.2418/2020/A1 date 12.02.2021 on the file of the first respondent herein, quash the same.

For Petitioners : Mr.B.Kumar, Senior Counsel
for Mr.K.Govi Ganesan

For Respondents : Mr.M.Mohamed Riyaz for R1 & R2
: Mr.K.Doraisami Senior Counsel
for Mrs.Muthumari Doraisamy
for R3 to R6

ORDER

This petition has been filed by the petitioners/'A' Party for quashing the proceedings initiated by the first respondent in Na.Ka.No.2418/2020/A1 date 12.02.2021 for the proceedings initiated under Section 145 of Cr.P.C. The 'B' Party has been arrayed as respondents 3 to 6. There is a dispute with regard to ownership and enjoyment of lands measuring 2 acres and 23 cents in S.F.No.83, Ganapathy Village, Coimbatore Taluk. The back ground of the case is that the third respondent had filed a suit in O.S.No.1908 of 2006 on the file of the Principal District Munsif Court, Coimbatore, against the first petitioner and his brother Raveendhararaj for Bare Injunction alleging that he is the absolute owner of the land and the third respondent had purchased the same vide Sale Deed dated 07.02.2006 and registered as Doct.No.2515 of 2006 from one Palanisamy and his vendor had purchased the same on 29.04.1981 from M/s.Sujini Textiles Ltd., who had purchased the same on 10.12.1970 in a Court Auction Sale. The first petitioner and his brother attempted to interfere with his possession and hence the suit.

2. The third respondent had filed a suit alleging that the first petitioner and his brother encroached with the possession. The first petitioner and his brother had filed their written statement contending that the property was purchased on 30.10.1979 and 16.04.1979 and the sale deeds were registered during the year 1981 and they have put up construction and running Motor Pumps manufacturing company by name "OM Muruga Industries". The trial has been commenced in this suit and the third respondent examined himself in chief by filing proof affidavit during the month of October, 2018 and the case is posted for cross examination of PW1. This being the case, the third respondent in collusion with the second respondent/Inspector of Police, E-3 Saravanampatti Police Station, Coimbatore District, have created some complaints and referred it to the first respondent/RDO herein and the first respondent has initiated Section 145 of Cr.P.C., proceedings.

3. The impugned notice under Section 145 of Cr.P.C. had been served on the petitioners. The petitioners appeared before the first respondent on 02.03.2021 and brought to the notice of the first respondent that a Civil Suit is pending regarding the subject mater and requested not to proceed further. But he did not accede to the petitioners' request and posted the hearing on 12.04.2021 for further enquiry. Hence, the petitioners had filed the above petition.

4. The contention of Mr.B.Kumar, learned Senior Counsel for the petitioners is that the Executive Magistrate failed to see that a Civil Suit in O.S.No.1908 of 2006 is pending on the file of the Principal District Munsif Court,

Coimbatore in respect of the subject matter and hence, Section 145 Cr.P.C., proceeding ought not to have been initiated. The Civil Suit filed by the third respondent herein is anterior in time. The first respondent ought to have left the matter to be decided by the Civil Court instead of initiating Section 145 Cr.P.C., proceedings. It is purely a Civil dispute between the petitioner, his brother and the third respondent.

5. The Executive Magistrate cannot assume the role of the Civil Court and initiate parallel proceedings. The second respondent had not registered any FIR and the complaint is in CSR stage only and it would prove that there is no serious allegation and threat impending Law and Order problem. Since the petitioner and the third respondent are already fighting before the Civil Court, the Civil Court would decide the ownership and occupation. The second respondent and the third respondent are trying to dispossess the first and second petitioners from this property. The third respondent damaged the machineries worth several lakhs of rupees, and in spite of complaint filed by the petitioner, the second respondent has not taken any action. Further on a perusal of the typed set of papers, it is seen on 14.02.2021, the petitioner had lodged a complaint to the second respondent against the third respondent who had sent more than 50 persons along with weapons on 14.02.2021 at midnight to the petitioner's property and assaulted their workers and encroached upon the property. On 15.02.2021 one Gowrishankar, Proprietor of Modern Dairy Machine had also lodged a complaint for the instance. The petitioner's daughter-in-law questioned the act of the third respondent and at that time, his daughter-in-law Mrs. Keethi Shree was assaulted and she was admitted in Sumith Multi Specialty Hospital. Since the second respondent failed to take any action, on 17.02.2021, a complaint was submitted to the Commissioner of Police, followed by another complaint on 24.02.2021. Despite the receipt of the complaint, the police have not taken any action. He also produced the photos taken in the scene of occurrence. Further he relied on the following judgments in support of his contention.

1) In Ram Sumer Puri Vs. State of U.P. and others, reported in (1985) 1 SCC 427.

2) In Mahar Jahan and others Vs. State of Delhi and others, reported in (2006) 1 SCC (Cr1) 320.

3) In P.Swaroop Rani Vs. M.Hari Narayanan Alias Hari Babu, reported in (2008) 5 SCC 765.

4) In M.Krishnamoorthy and others Vs. The Sub-District Magistrate-cum-Revenue Division Officer, reported in 2017 (1) CTC 680.

6. An unreported judgment in Shanmugam and others v. The Executive Magistrate cum Revenue Divisional Officer, Coimbatore South, Coimbatore [Cr1.R.C.No.806 of 2019 of this Court dated 25.11.2019] for the proposition that once a Civil Court case is pending with regard to the ownership and

occupation, the Civil Court's order is only binding. Hence, in view of the same, initiation of proceedings under Section 145 Cr.P.C., ought not to be entertained.

7. Mr.K.Doraisamy, learned Senior Counsel for the respondents reiterated the contentions of the third respondent that he had purchased the property and he is the absolute owner of the lands measuring 2 acres and 23 cents in S.F.No.83, Ganapathy Village, Coimbatore Taluk, he had purchased the property by way of sale deed dated 07.02.20006 and registered as Doc.No.2515 of 2006. The petitioners herein are not known to the third respondent and they have no right in any manner, who are not at all related to the said property. The petitioner is a total stranger. The first petitioner and his brother Raveendhararaj were arrayed as defendants and the suit is proceeding. Initially injunction was granted in favour of the third respondent and steps taken under Order 39 Rule 1 of CPC, the respondent is in possession and occupation prima facie is proved. Thereafter in the year 2014, the first petitioner herein had filed IA.No.2379 of 2014 to implead himself and the same was allowed. In the year 2006, on 24.07.2006, the third respondent wanted to clear out unwanted grass and shrubs and hence, the suit was filed seeking permanent injunction restraining the defendants, his relative and his men from in any manner entering, interfering or disturbing with the peaceful possession and enjoyment of the suit property and this petitioner possession and enjoyment was not in dispute.

8. The respondent in support of his contention had relied upon the decision of this Court in CrI.R.C.No.123 of 1997 & CrI.M.P.No.759 of 1997, Mangalanathan & another Vs. State through Inspector of Police, J-2, Mathichiyam Police Station, Madurai City and others, reported in 2000 MLJ P.No.200.

9. It is admitted by the petitioners themselves that the alleged occurrence happened in the mid night on 14.02.2021 and hence, the complaints have been lodged on 14.02.2021, 17.02.2021 and 24.02.2021. The purport of Section 145 is that whenever there is a dispute concerning a land or water which is likely to cause breach of peace, Section 145 Cr.P.C. proceedings is to be initiated. The petitioner himself admitted that there is a breach of peace. Hence, the second respondent on complaint forwarded the same to the first respondent with a request, who initiated 145 Cr.P.C., proceedings, which is proper and correct. The petitioner having responded to the summons appeared before the first respondent, the petitioner was directed to submit his evidence. Since he has got no materials to substantiate his claim, he later failed to appear before the first respondent, on the other hand approached this Court seeking for quashing of the Section 145 Cr.P.C. proceedings.

10. Mr.M.Mohamed Riyaz, the learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that suit is pending between the petitioner and the respondent from the year 2006. On 14.02.2021 they found caught in a chaos between these two groups which led to initiation of action and calling for enquiry. Despite the attempt by the respondent police asking them to maintain peace, they failed to do so and since there was a livelihood of breach of peace and there is a possibility of deteriorating Law & Order problem, the second respondent immediately informed the first respondent. The first respondent having satisfied with the report, had initiated 145 Cr.P.C., proceedings. The petitioners appeared and participated in the same. Thereafter, they have approached this Court which is not proper. The proceedings under Section 145 Cr.P.C., has been rightly initiated. If the petitioner has got documents and materials that he is in possession and enjoyment of property nothing stops him to produce the same to the first respondent. It is for the first respondent on the materials produced by both the 'A' Party and 'B' Party to pass appropriate orders. The primary objective of 145 Cr.P.C., proceedings is to maintain peace and tranquility.

11. Considering the rival submissions, on perusal of the materials it is seen that from the year 2006, a Civil Suit is pending between the petitioner, his brother and the third respondent. Thereafter in the year 2014 the first petitioner had got impleaded himself in the suit. The suit is for bare injunction restraining the petitioners interfering or disturbing with the peaceful possession and enjoyment of the third respondent. It is not a suit for declaration or possession. Further, from the year 2006 till 2021, there have been no interference, aggression, causing any breach of peace and the suit is contested by both the parties. Now, on 14.02.2021 the breach of peace had occurred. In view of the same, the first respondent had initiated proceedings under Section 145 Cr.P.C.

12. The judgments referred by the counsel for the petitioner is on different facts, the facts therein are not identical to the dispute and case in hand. There the dispute is between the family members i.e., wife, son, daughter and husband. Admittedly, in this case, the petitioners have not filed any suit and it is only the third respondent who filed a suit against the petitioners, that too a bare injunction suit.

13. Further, it is an admitted fact that the petitioner, in response to the notice, had appeared before the first respondent on 02.03.2021 and thereafter the case was posted on 12.04.2021. On that day, the petitioner ought to have presented the documents and materials to show prima facie he is in possession in the property now disputed. On the other hand, the act of the petitioner in approaching this Court midway to the enquiry by filing this Criminal Original

Petition is not proper.

14. In view of the same, this Court is not inclined to interfere with the proceedings under Section 145 Cr.P.C. initiated by the first respondent. This Court directs the first respondent to complete the proceedings without any delay preferably within a period of three months.

15. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

dna

To

- 1.The Executive Magistrate-cum-
Revenue Divisional Officer
Coimbatore North,
Coimbatore.
- 2.The Inspector of Police
E-3, Saravanampatti Police Station
Coimbatore District.
- 3.The Public Prosecutor
High Court of Madras
Chennai - 600 104.

+1cc to Mrs.Muthumari Doraisamy, Advocate SR.No.25873

+2ccs to Mr.A.Yougaraj, Advocate SR.No.25909

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and
M.P.No.3500 of 2021

GPL (CO)
GMY (30/04/2021)