

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No. 320 of 2011

Seba Suna and Others

.... ***Petitioners***

Mr. A.P. Bose, Advocate

-versus-

State of Odisha and Another

.... ***Opposite Parties***

Mr. S.N. Das, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE

Order No.

ORDER
25.03.2022

- 04.
1. The challenge in the present petition is to an order dated 24th March, 2011 passed by the learned Executive Magistrate (EM), Bargarh in C.M.C. No.83 of 2010 under Section 145 of the Code of Criminal Procedure, 1973 (Cr.P.C.).
 2. Mr. Bose, learned counsel for the Petitioner points out that by the said order each of the objections raised by the Petitioners to the maintainability of the proceedings was noted by the EM but without giving any reasons, he simply concluded that the case is maintainable.
 3. It may be noted here that while issuing notice in the present petition on 4th May, 2011 the further proceedings in the aforementioned C.M.C. No.83 of 2010 remains stayed.
 4. Despite service of notice on Opposite Party No.2 (complainant), none has appeared today on his behalf. It is stated in the petition

and by Mr. Bose during his arguments that there are already civil proceedings pending between the parties arising out of Mutation Case No.642 of 1997. There was a Mutation Appeal No.3 of 2002 pending in the Court of the Sub-Collector, Bargarh. In that appeal on 27th February, 2002 the mutation case was stayed. Another Mutation Appeal No.3 of 2010 is also stated to be pending before the Sub-Collector. With there being civil disputes between the parties in the form of the aforementioned proceedings, there was no warrant for entertaining a petition by one of them under Section 145 Cr.P.C.

5. The decision of this Court in ***Sashimani Dibya v. Bishnupriya Mohapatra 1991 (I) OLR 218*** emphasizes that when a civil litigation is pending for property wherein question of possession is involved, initiation of parallel criminal proceedings under Section 145 Cr.P.C. would not be justified.

6. Consequently, the Court sets aside the order dated 24th March, 2011 passed by the EM and quashes the proceeding initiated under Section 145 Cr.P.C. against the Petitioners herein in Criminal Misc. Case No.83 of 2010.

7. The CRLREV is allowed.

(Dr. S. Muralidhar)
Chief Justice