
(2002) 02 AP CK 0146

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5213 of 2001

Balmukund Gupta and Another

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145

Citation : (2002) 1 ALD 552 : (2002) 1 ALD(Cri) 552 : (2002) 1 ALT 464 :
(2002) 1 ALT(Cri) 464 : (2002) 1 APLJ 226

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Shyam S. Agarwal, for the Appellant; Public Prosecutor, for the Respondent

Judgement

C.Y. Somayajulu, J.—On the basis of a report dated 7-5-2001 given to the Inspector of Police, Tukaram Gate P.S., alleging that A and B parties mentioned therein are creating trouble with unsocial elements and are disturbing peace and tranquility in the locality at Kranti Venkateswara Apartments situated a Teachers Colony, Maredpally, Secunderabad, the learned Special Executive Magistrate registered a case in M.C.No.290 of 2001 and issued preliminary order u/s 145(1) Cr. P.C. on 4-5-2001 by directing the parties mentioned therein to appear before him on 28-5-2001. This petition is filed to quash the said proceedings in M.C.No.290 of 2001.

2. The contention of the learned counsel for the petitioners who are shown as "B" party in the M.C. proceedings is that Pushpa Gupta, wife of the first petitioner, along with her daughter Smt.Sudha Gupta and grand son Vineet Gupta purchased three flats in the 5th floor bearing Nos.501 to 503 in Kranti Venkateswara Apartments by paying the entire sale consideration under a registered sale deed and that "A" parties mentioned in the M.C. proceedings entered into an agreement to construct flats therein, but failed to complete the construction and deliver possession of the flats to them as per the contract and

so they filed proceedings before the District Consumer Redressal Forum against the developer. It is also their case that when the developer constructed a Pent house without permission, a suit in O.S.No.980 of 1999 for mandatory injunction and demolition of unauthorized structures was filed and the same was decreed on 4-1-2000 and that the wife of the first petitioner filed O.S.No.274 of 2001 on the file of the Court of the III Senior Civil Judge, City Civil Court, Hyderabad against respondents 2 and 3 and others seeking a decree for perpetual injunction restraining respondents 2 and 3 and others from interfering with the construction work taken up by her in the flats and that in I.A.No.659 of 2001 filed in that suit, the Court passed an order of interim injunction against respondents 2 and 3 and others and that respondents got issued the proceedings in the question only with a view to get over the order of injunction obtained by the wife of the petitioner.

3. The learned counsel for the petitioners relying on RAM SUMER PURI MAHANT vs. STATE OF UTTAR PRADESH AND OTHERS¹ and REVU KRISHNAMURTHY AND ANOTHER vs. PONAMANDA VENKATESWARA RAO AND OTHERS² contended that since civil proceedings in respect of the same property are pending, proceedings u/s 145 Cr. P.C. are liable to be quashed. The learned counsel for the respondents relying on HARIJAN YELLAIAH ALIAS MADIGA YELLUGA vs. STATE OF A.P.REP. BY PUBLIC PROSECUTOR³ and JHUNAMAL vs. STATE OF M.P.⁴ contended that proceedings u/s 145 Cr. P.C. and civil proceedings can go on simultaneously and so there are no grounds to quash the proceedings initiated by the learned Magistrate.

4. In HARIJAN YELLAIAH case (3 supra) relied on by the learned counsel for the respondents, a Division Bench of this Court held as follows:-

"(1) The pendency of a civil suit between the parties in respect of the disputed land does not take away the jurisdiction of the Criminal Court to initiate proceedings u/s 145 Cr. P.C. if the Criminal Court is satisfied that the dispute is likely to result in the breach of peace. The Magistrate however should not lightly proceed in the matter, when the same is pending in a Civil Court.

(2) During the enquiry u/s 145 Cr. P.C. if it is brought to the notice of the Criminal Court that there is an order of the Civil Court in regard to the possession even by way of interim injunction, the same should be given due weight and it is expedient that the Criminal Court should uphold the order of the Civil Court, and it makes no difference whether the order of the Civil Court was passed before or after the initiation of the proceedings u/s 145 Cr. P.C. The Criminal Court should better drop the proceedings initiated u/s 145 when there is such an order of injunction issued by the Civil Court in regard to the possession, and if necessary may initiate proceedings u/s 107 Cr. P.C.

(3) If the Civil Court has not issued any order with regard to the possession even by way of temporary relief, or where such order is vacated or kept in abeyance by higher Courts, that is to say, when such order is not in force and the Criminal Court is satisfied that there is apprehension of imminent breach of the peace, it

can proceed with the enquiry u/s 145 Cr. P.C. and pass appropriate orders, despite the pendency of the Civil Suit."

5. A learned single Judge of this Court while considering the two cases of the Supreme Court i.e., RAM SUMER PURI (1 supra) and JHUNAMAL (4 supra) held that "in case a party files a civil suit and obtains an injunction against the defendant, it is not open to the defendant to initiate proceedings u/s 145 Cr. P.C. and in a case where such an initiation of preliminary order u/s 145 Cr. P.C. is passed, such order is liable to be quashed at the instance of the plaintiff inasmuch as it is open to the defendant to participate in the civil proceedings and being the remedy from there itself and in cases where Section 145 proceedings are already initiated and final orders are yet to be passed, it is open to the aggrieved party to initiate civil proceedings by means of a suit and in the event of his failure to obtain interim orders of injunction from the trial Court, he may pursue the same from the revisional court or High Court and that the revisional Court or High Court shall not quash the orders made in Section 145 Cr. P.C. though civil suit is pending but it may be quashed on merits."

6. In this case since the injunction was obtained even prior to the Special Executive Magistrate passing the preliminary order u/s 145 Cr. P.C. , this is a case covered by the first example given in G.PRABHAKAR RAO vs. STATE POLICE⁵ because in this case the wife of the first petitioner obtained injunction on 27-4-2001 and the proceedings u/s 145 Cr. P.C. were initiated on 11-5-2001 i.e., long subsequent to the wife of the first petitioner obtaining order of injunction in respect of one flat.

7. The contention of the learned counsel for the respondents is that since the petitioners are not parties to the civil suit, the civil suit is not and cannot be said to be between the same parties. Though it is a fact that the injunction was obtained by Pushpa Gupta, the fact that Pushpa Gupta is the wife of the first petitioner, as alleged in the petition, is neither denied nor disputed by the petitioners. Since the wife of the first petitioner obtained an order of injunction, probably to see that that order would not come in the way, the possibility of the respondents giving a report against the husband of the woman that obtained the order of injunction cannot be ruled out. So, the fact that the injunction was obtained by the wife of the first petitioner but not the first petitioner himself is not a ground for not applying the ratio in the above cases to the facts of this case.

8. As rightly contended by the learned counsel for the respondents the injunction is only with respect to one flat i.e., flat No.502 on the 5th floor but not in respect of the other flats. Therefore , in view of the fact that the civil suit is pending with regard to one flat i.e. flat No.502 between the parties or their close relatives, the order in respect of flat No.502 on the 5th floor of Kranti Venkateswara Apartments is not sustainable in view of the decisions referred to above. Hence, proceedings in respect of flat No.502 alone are quashed. The petitioner is ordered accordingly. The learned Magistrate shall complete the proceedings as

expeditiously as possible, at any rate, before the end of April, 2002.