
(1999) 09 AP CK 0075

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3879 of 1999

Gaddam Rajaiah

APPELLANT

Vs

M.R.O. and Mandal Executive Magistrate and Others

RESPONDENT

Date of Decision : 15-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146, 482

Citation : (1999) 2 ALD(Cri) 933 : (2000) 1 ALT(Cri) 431 : (2000) CriLJ 1057

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : P. Rajaiah, for the Appellant; P.V. Narayana Rao, for the Respondent

Judgement

Vaman Rao, J.—In this petition filed u/s 482, Cr. P.C. the order passed by the first respondent Mandal Revenue Officer dated 28-7-1999 passed u/s 145, Cr. P.C. in respect of the land dispute relating to S.No. 212 situated at Chinthapally village is sought to be quashed.

2. The Mandal Revenue Officer has received a report from Sub Inspector of Police, Dandepally stating that the land bearing S.No. 212 measuring Ac. 6-02 guntas situated at Chinthapally village of Dandepally mandal was under dispute and there was possibility of breach of law and order in the village, and requested the Mandal Revenue Officer to initiate action u/s 145, Cr. P.C. and pass suitable orders.

3. It may be mentioned that the learned Mandal Revenue Officer and Executive Magistrate while initiating action u/s 145, Cr. P.C. and directing the parties concerned to file written statements of their respective claims as to the fact of actual possession of the said land also directed taking over the land in question into Government's custody till further orders.

4. This order is sought to be quashed on the sole ground that civil suit in respect of the same land is pending in which the petitioner herein had obtained temporary injunction order restraining the defendants from interfering with his

possession. It is stated that the petitioner herein filed a suit in O.S. 50 of 1996 on the file of Junior Civil Judge, Luxettipeta and obtained temporary injunction order on 23-7-1996 against the Respondent No. 3 and others. However, the said injunction order was vacated on 27-9-1996 and the petitioner filed CM.A. No. 10 of 1996 on the file of Senior Civil Judge, Asifabad. The Civil Miscellaneous Appeal was allowed on 12-11-1997 and confirmed the order dated 23-7-1996 passed by the Junior Civil Judge, Luxettipeta. It is also pointed out that the Respondent No. 2 herein made an application for impleading himself in that suit but his application was dismissed and his revision petition against that order was also dismissed by the High Court on 15-6-1999. It is stated that the respondent No. 3 in collusion with the Respondent No. 2 are making hectic efforts to dispossess the petitioner. The contention is that when Civil Court passed a temporary injunction order there is no scope for taking proceedings u/s 145, Cr. P.C.

5. In support of this, a decision of Division Bench of this Court in the case of Harijan Yellalah v. State of Andhra Pradesh (1980) (2) Andh LT 290 : 1981 Cri LJ 988 is relied upon. A decision of Rajasthan High Court in the case of Harijan Yellaiah and Another Vs. State of Andhra Pradesh and Others, is also relied upon.

6. On behalf of the second respondent a counter affidavit (in the stay vacate petition) has been filed. It is stated that the second respondent is the father of the petitioner herein and the respondent No. 3. It is claimed that the second respondent is in possession of the land in question as owner. He therefore filed a petition under Order 1 Rule 10 for impleading himself. His petition was dismissed. Cr. P. No. 79 of 1999 filed by him in the High Court was also dismissed with an observation that the injunction does not bind him. It is stated that his name has been recorded in the revenue records as person in possession of the said land. On this basis the contention of the learned counsel for respondents is that the dictum that when the Civil Court is seized of the matter and passed an injunction order proceedings u/s 145, Cr. P.C. cannot be taken does not apply to the facts of this case.

7. It may be mentioned that the Division Bench of this High Court in the case of Harijan Yellalah v. State of Andhra Pradesh 1981 Cri LJ 988 referred to above has not held that where Civil suit is pending between the parties the Executive Magistrate would be divested of jurisdiction to proceed u/s 145, Cr. P.C. In fact the following observations are significant.

The pendency of 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 breach of peace. What their Lordships held was when a Civil suit is pending in respect of the same properties the Executive Magistrate should not lightly proceed in the matter. In this case, admittedly, the Respondent No. 2 herein was not impleaded by the petitioner as a party in that civil suit. The second respondent's application for impleading was obviously opposed and it was ultimately dismissed even by the High Court with an observation that the

injunction order would not be binding on him. Under these circumstances in view of the facts and circumstances of this case pendency of civil suit and issuing of a temporary injunction order cannot be said to be a bar for taking proceedings u/s 145, Cr. P.C. in this case for the simple reason that the 2nd respondent, who claims possession over the land in dispute, is not a party to the civil suit.

8. However, on behalf of the learned Counsel for the respondent No. 2, it is stated that earlier II Class Executive Magistrate/ Mandal Revenue Officer Dandepally passed an order in proceedings A/2836/96 dated 20-12-1996 u/s 145, Cr. P.C. in respect of the same land. No notice of the petition was given to the second respondent herein and the learned Executive Magistrate passed an order initiating proceedings u/s 145, Cr. P.C. and directing the Mandal Revenue Inspector, Dandepally to hand over the seized paddy crop to the petitioner herein. The respondent No. 2 preferred Criminal Revision case No. 183 of 1997 in the High Court in which the petitioner herein was respondent No. 3. This Criminal Revision case was disposed of by an order dated 29-1-1999 setting aside the order of the Executive Magistrate dated 20-12-1996. This Court also gave a direction to the District Collector, Adilabad to transfer the proceedings to the Mandal Revenue Officer, Luxettipeta to take up the proceedings and directing that the said Executive Magistrate shall proceed with the case according to law. In pursuance of the said orders of the Court dated 29-1-1999 the District Collector transferred the proceedings u/s 145, Cr. P.C. to the Executive Magistrate/Mandal Revenue Officer, Luxettipeta and the Executive Magistrate proceeded with the proceedings u/s 145, Cr. P.C. transferred to him by the District Collector. This impugned order dated 28-7-1999 was passed by the Mandal Revenue Officer, Luxettipeta under the above mentioned circumstances. It is stated that the petitioner suppressed these material facts in the present Criminal petition. The contention of the learned Counsel for the respondent No. 2 is that the Executive Magistrate/Mandal Revenue Officer, Luxettipeta has taken up the proceedings u/s 145, Cr. P.C. in view of the transfer of the case to him by the Collector as directed by the High Court and under these circumstances no mala fides can be attributed to him. Considering the circumstances, I do not think that the allegation of mala fides has any significance in this case.

9. As stated above, the only ground urged in support of the plea for quashing the proceedings was based on the fact of the pendency of the Civil suit and the fact that an injunction order was issued in the suit in favour of the petitioner, but as held above in as much as the respondent No. 2 herein was not a party to that suit and the injunction order issued by the Civil Court does not bind him, the proceedings u/s 145, Cr. P.C. cannot be quashed on that ground.

10. However, it is seen that though no argument has been advanced in this respect on behalf of the petitioner, the learned Magistrate apart from passing an order under Sub-section (1) of Section 145, Cr. P.C. also passed an order directing taking of the land into Government custody simultaneously. Such an order can be made any time after an order u/s 145(1) of Cr. P.C. has been

passed u/s 146, of Cr. P.C. For passing such a direction for taking possession or attachment of the land in dispute, the requirements as contemplated u/s 146, of Cr. P.C. have to be satisfied. An order under this section can be passed where the Magistrate considers the case to be one of "emergency". The learned Magistrate has not recorded his opinion that it was a case of emergency.

11. An order u/s 146, of Cr. P.C. can also be passed if he decides that none of the parties was in actual possession or if he is unable to satisfy himself as to who of them was in possession. In the absence of any material for coming to any such conclusion, an order directing the property to be taken into Government custody is not permissible u/s 146 of Cr. P.C.

12. Under the circumstances, this part of the order under which the learned Magistrate has directed the property to be taken into Government Custody stands quashed. But, the proceedings u/s 145 of Cr. P.C. already initiated shall continue.

13. With the above directions, this criminal petition is disposed of No. costs.