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**(1980) 09 AP CK 0007**

**In the Andhra Pradesh High Court**

**Case No : Criminal Miscellaneous Petition No. 822 of 1979**

Harijan Yellaiah and Another

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

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**Date of Decision : 02-09-1980**

**Acts Referred:**

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

**Citation :** (1980) 2 APLJ 237 : (1981) CriLJ 988

**Hon'ble Judges :** Madhusudan Rao, J; Jayachandra Reddy, J

**Bench :** Division Bench

**Advocate :** B. Subhashan Reddy, for the Appellant; Public Prosecutor and K. Mahipathy Rao, for the Respondent

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## **Judgement**

Reddy, J.—This Criminal Miscellaneous Petition has come up before us by way of a reference made by our learned brother Muktadar, J. The question which is of general importance that arises for consideration in this petition is whether the Criminal Court has jurisdiction to initiate proceedings u/s 145, Cr.P.C. in respect of immovable property which is the subject matter of pending civil litigation, and if so, whether an order of the Civil Court on the question of possession, even for the purpose of giving an interim relief, is binding of the Criminal Court.

2. The facts that gave rise to this question are as follows :- The lands in dispute are situated in Gupta Village, Nizamabad District. In respect of these lands the petitioner filed O.S. No. 371 of 1978 in the Court of the District Munsif, Nizamabad claiming the relief of perpetual injunction; and an interim injunction was granted in I.A. No. 93 of 1978 and the same was made absolute on 2-12-1978. While so, the Sub-Divisional Magistrate, Nizamabad first initiated proceeding u/s 107, Cr.P.C. by his order of 16-12-78 and the same is said to be pending. Again on 4-1-1979 the Sub-Divisional Magistrate initiated proceedings u/s 145, Cr.P.C. which was numbered as A4156/78. Summonses were issued u/s 145, Cr.P.C. to both the parties. In the said summons it is stated that from the information laid before him the Sub-Divisional Magistrate was satisfied that a

dispute likely to cause breach of the peace exists between the parties regarding the possession of these lands. These proceedings are sought to be quashed in this criminal miscellaneous petition filed on 20-2-1979. It may be mentioned here that the respondents filed an appeal in the District court against the order of the District Munsif granting injunction but the same was dismissed and a civil revision petition filed in this Court against the said order is said to be pending. The fact however remains that there is an injunction order in force in favour of the petitioners restraining the respondents from interfering with the possession of the petitioners. Both the learned counsel stated before us that the learned Sub-Divisional Magistrate has also ordered attachment of the properties but all the proceedings before him are stayed by an order of this Court, pending this petition for quashing the proceeding initiated u/s 145, Cr.P.C.

3. The learned counsel for the petitioner contends that the initiation of the proceedings u/s 145, Cr.P.C. is illegal and without jurisdiction when the matter is sub-judice before the Civil Court and when there is an order of injunction in favour of the petitioner and that the injunction order is binding on the criminal Court. The learned counsel for the respondents on the other hand contends that the proceedings initiated by the Sub-Divisional Magistrate u/s 145, Cr.P.C. are not illegal or without jurisdiction and the injunction issued by the Civil Court does not preclude the Criminal Court from coming to its own conclusion. Both the learned counsel have cited decisions of the Supreme Court and various High courts in support of these rival contentions.

4. We shall now examine the first aspect of the question, viz, whether the criminal court has jurisdiction to initiate proceedings u/s 145, Cr.P.C. in respect of an immovable property which is the subject matter of a pending civil litigation. The object of Section 145, Cr.P.C. is to prevent a breach of the peace by maintaining one or other of the parties in possession. This provision enables the Magistrate to intervene and pass an order in regard to the possession of the property in dispute having effect until the actual right of one of the parties is determined by a competent civil Court. But when a dispute about the immovable property is pending before a Civil Court and if one of the parties to the suit moves a Magistrate to take proceedings u/s 145 Cr.P.C. about the same property involved in the suit, can it be said that the criminal Court has no jurisdiction to proceed even if it is satisfied that there is likelihood of a breach of the peace ? A Full Bench of the Rajasthan High Court in *Tikuda Vs. State and Others*, has considered this question and held :

"It may be observed that if a dispute about a certain immovable property is pending before a revenue or a civil Court and if one of the parties to that suit moves a Magistrate to take proceedings u/s 145 of the Cr.P.C. about the same immovable property which is involved in the suit, the Magistrate should not lightly proceed in the matter.

"He should weigh and consider whether there is a real apprehension of the breach of the peace and even if there is such an apprehension, whether the

same cannot be averted by proceeding u/s 107, Cr.P.C. For instance in a case like that of Rugga where a suit for declaration and injunction is pending in a revenue court or if a similar case is pending in a Civil Court, and if a temporary injunction against one party has already been given by that court, then it is evident that the said Court has already considered that party in possession of the immovable property in whose favour the injunction has been granted and if in spite of that temporary injunction the other party is bent upon dispossessing the first party and a breach of peace is imminent, then the proper course is to bind down the party which is not in possession of the property, to keep peace for the requisite period.

This does not, however, mean that the jurisdiction of the Magistrate to proceed u/s 145, Cr.P.C. is ousted simply because a suit about the same immovable property is already pending in a revenue or civil court. What we only mean to say is that in such cases the Magistrate must proceed with care and caution, after ascertaining full facts from the party which moves the application u/s 145, Cr.P.C."

We are of the opinion at the outset that the Full Bench of the Rajasthan High Court has approached the problem from the proper angle and the view ultimately taken by the Rajasthan High Court is just and expedient. We shall however consider the decisions of the other High Courts. In Kuber Padhan Vs. Chaturbhuj Kuar and Others, the learned Judge of the Orissa High Court held that it is well settled that mere institution of a civil suit does not take away the jurisdiction of a Magistrate to institute a proceeding u/s 145, Cr.P.C. and unless there is an interim arrangement made by the civil Court in the matter of possession, the Magistrate has jurisdiction to continue the proceeding u/s 145, Cr.P.C. In Iqbal Mohd. v. State of Madhya Pradesh (1973 MPLJ 78), the High Court of Madhya Pradesh took a similar view and held that the jurisdiction of the Magistrate to deal with the application u/s 145, Cr.P.C. is not taken away only because in the meanwhile the civil Court has passed an interim injunction in favour of a party. In Kalap Din v. State (1970 All LJ 873) a Division Bench of the Allahabad High Court held that if a Magistrate is satisfied that a dispute relating to immovable property giving rise to apprehension of breach peace exists, he can take action u/s 145, Cr.P.C. even when a civil suit relating to the same property and between the same parties is pending in a Court of competent jurisdiction. Our learned brother Chennakesava Reddy, J. in Bodapati Kondayya and Others Vs. The Sub-Divisional Magistrate and Others, referred to some of these decisions and held that if the Magistrate is satisfied otherwise, he can initiate proceedings u/s 145, Cr.P.C. and the mere existence of any pending civil suit between the parties cannot bar the initiation of proceedings u/s 145 Cr.P.C.

5. It can be seen that various High courts have consistently taken the view, with which we are in agreement, viz., that the mere pendency of the civil suit does not taken away the jurisdiction of a Criminal Court to initiate proceedings u/s 145 Cr.P.C. if it is satisfied that there exists a dispute which is likely to result in

the breach of the peace. It must also be remembered that many a time a Criminal Court may not even be aware of the pendency of the civil suit or any order passed by the Civil Court in regard to the possession. Therefore, the submission that the mere pendency of the Civil suit bars the Criminal Court to initiate proceedings u/s 145 Cr.P.C. has to be rejected.

6. The next question is whether an order of the Civil Court on the question of possession even for the purpose of giving an interim relief, is binding on the criminal Court. As already mentioned the proceedings u/s 145 Cr.P.C. are intended to prevent a breach of the peace by maintaining one or other of the parties in possession, and it is ultimately the decision of the civil Court that determines the rights of the parties. It, therefore, stands to reason that when there is an order of a civil Court in respect of the possession even while giving a temporary relief and if the same is brought to the notice of the criminal Court, the criminal Court should respect such an order of the civil court. On this aspect the Full Bench of the Rajasthan High Court in Tikuda's case, (1961 (2) Cri LJ 552) (supra) observed that the criminal Court should not lightly proceed in the matter when the same is the subject matter of the civil suit. The Full Bench further observed that if a temporary injunction against one party has already been given by the Civil Court, then it is evident that the Civil Court had considered that party in possession of the immovable property in whose favour the injunction has been granted and in spite of the injunction order if there is an apprehension of the breach of the peace, the Criminal Court should consider whether the same cannot be averted by proceeding u/s 107 Cr.P.C. In *Mirza Mohd. Azia v. Safdar Hussain* (1962 (1) Cri LJ 116) a single Judge of the Allahabad High Court held that where a party against whom an order has been passed in a case u/s 145 Cr.P.C., files a suit in a competent Civil Court for the decision of the dispute and the Civil Court issues temporary injunctions stopping the other party from taking possession of the property in dispute according to the order of the Magistrate, the order of the Criminal Court although valid cannot be enforced so long as the injunction is in force.

In *Iqbal Mohd. v. State of Madhya Pradesh* (1973 MP LJ 78) (supra), the Madhya Pradesh High Court, while holding that the jurisdiction of the Criminal Court to deal with an application u/s 145 Cr.P.C. is not taken away only because in the meanwhile the Civil Court has passed an order of injunction in favour of a party, further observed that the effect of the order of injunction of the Civil Court is that if the Magistrate comes to the conclusion that the party in whose favour the order of injunction was issued was not, in fact, in possession of the property on the relevant date, the Magistrate cannot in pursuance of his order direct delivery of the property to the successful party if the party in whose favour the injunction order was passed has somehow managed to come in possession thereof. The Madhya Pradesh High Court also referred to a decision of the Supreme Court in *Sajjan Singh v. Sajjan Singh*, 1970 U.J. (SC) 75. That was a case where an interim injunction was granted in favour of one party by the Civil court after the Criminal Court initiated proceedings u/s 145 Cr.P.C. and the question considered

was whether the jurisdiction of the Criminal Court acting u/s 145 Cr.P.C. was taken away only because an order of temporary injunction was passed by the Civil Court subsequently, and the Supreme Court under those circumstances observed thus :-

"In our opinion this case must go back to the Sub-Divisional Magistrate for decision of the proceedings before him. Those proceedings commenced as far back as 1967 and the question whether there is or there is not any apprehension of breach of peace will certainly have to be decided in the light of the happening in the Civil Court. In the meantime we do not see any reason to order the setting aside the order of the High Court. It will be open to the Sub-Divisional Magistrate to consider whether the Receiver should be continued or not, but in any event, he shall not disturb the possession of sajjan singh (the appellant before their Lordships) so long as the temporary injunction is outstanding and pending the decision of the proceedings u/s 145 of the Cr.P.C. with a view to handing over the possession to the other side. With these remarks, we dismiss the appeal".

The principle underlying this decision is that when there is an order of the Civil Court in regard to the possession even by way of a temporary injunction, the same should be respected by the Criminal Court while conducting an enquiry u/s 145 Cr.P.C.

7. We shall now examine the decisions cited by the learned counsel for the petitioner in support of his contention that the proceedings u/s 145 Cr.P.C. are unnecessary when the matter is sub-judice before the Civil Court. In *Usharani Bej and Others Vs. Mongal Munda and Another*, a single Judge of the Calcutta High Court held that when there is a civil suit pending and when an order of injunction by the Civil court is issued that would be sufficient step to prevent the breach of the peace and simultaneous proceedings u/s 145 Cr.P.C. may induce conflict of decisions and therefore they have to be quashed. In *Malkappa Vs. Padmanna, Narayan Pai, J.*, of the Mysore High Court held that if the parties had already gone to a Civil and if the Criminal Court should start parallel proceedings in respects of the same lands, it will have the effect of undermining the authority of the Civil Court and that the Magistrate can proceed u/s 107, Cr.P.C. to bind over the parties. In *Puran Singh and Others Vs. Labhu Ram*, a single Judge of the Himachal Pradesh High Court observed that essence behind the proceedings u/s 145 Cr.P.C. is the fear of breach of peace which is likely to result when one party attempts to dispossess the other and if the Civil Court is seized of the matter and temporary injunction have been obtained, there is hardly any necessity for duplication of proceedings before the criminal Court and therefore they are liable to be quashed. In *Yeshwant Ganpati Khot v. Anusuyabai* (1979 Cr LJ 67) *Jahagirdar, J.*, of the Bombay High court held thus :- (at p. 69)

"Magistrates exercising their jurisdiction u/s 145 of the Cr.P.C. would always do well to take note of the orders passed by the Civil Courts and do respect them in so far as they are consistent with their duties u/s 145".

The learned Judge further observed (at p. 70)

"If a Civil Court decides the question of possession even for the purpose of giving an interim relief, the Magistrate acting u/s 145 should respect that decision as well."

The view taken by the Mysore and Bombay High Courts lays down the correct guidelines for the Criminal Courts while conducting an enquiry u/s 145 Cr.P.C. in a case where the matter is also pending in the civil Court and when certain orders are passed by the civil court in regard to the possession. We are however unable to subscribe to the view that mere pendency of the civil proceeding is a ground to quash the proceeding initiated under S. 145, Cr.P.C.

8. The learned counsel for the respondents relies on *Bodapati Kondayya and Others Vs. The Sub-Divisional Magistrate and Others*, and contended that it was also a case where an interim injunction was granted and yet the learned Judge held that criminal Court can proceed with the enquiry u/s 145 Cr.P.C. and therefore the proceedings u/s 145 Cr.P.C. in the instant case cannot be quashed. We have carefully examined the above decision and our learned brother has nowhere pointed out that the Criminal Court need not consider the order of interim injunction granted by the Civil Court. On the other hand, towards the end of the Judgment it is observed thus :- (at p. 115 of 1974 Cri.L.J.)

"The duty of the Magistrate is to uphold the decree of the Civil court for possession in respect of the disputed lands. He cannot go behind the decision of the Civil Court in the matter. It is, therefore, open to the petitioners to bring to the notice of the Criminal Court if there is any decision of the Civil court" With these observation the petition was dismissed. It can, therefore, be seen that the learned Judge having held that the pendency of the civil suit does not take away the jurisdiction of the Criminal Court to initiate proceeding u/s 145 Cr.P.C., however observed that the parties can bring to the notice of the Criminal Court if there is any decision of the Civil Court. The learned Judge at no stage indicated that the criminal court can ignore an order of interim injunction.

9. In view of the above discussion the following finding can be arrived at :-

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 breach of peace. The Magistrate however should not lightly proceed in the matter, when the same is pending in 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 of 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.

10. In the instant case the interim injunction granted by the Civil Court is made absolute and the same was confirmed by the appellate Court also. It is also admitted that the Criminal Court has also initiated proceedings u/s 107 Cr.P.C. That being so, we think it is unnecessary to allow the proceedings u/s 145 to continue, and they are accordingly quashed, and the Criminal Misc. Petition is allowed.

11. Petition allowed.