

(1978) 12 AP CK 0020

In the Andhra Pradesh High Court

Case No : Criminal MP No. 1955 of 1978

N. Swamynath and Another

APPELLANT

Vs

B.N. Ramakrishna and Others

RESPONDENT

Date of Decision : 15-12-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 145(5)

Citation : (1978) 12 AP CK 0020

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Advocate : K.G. Kannabiran, for the Appellant; C. Padmanabha Reddy for the 1st Respondent, Mr. C. Sitaramayya for the 2nd and 3rd Respondent and Mr. M. Rammohan Rao for the 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Justice Muktadar, J.—The Petitioners before me named N. Swaminath and N. Lakshman, are alleged to be the partners in the firm known as Annapurna Exhibitors. Proceedings u/s 145 Cr. P.C., were initiated and preliminary order was passed. During the pendency of the proceedings R-5 who was the proprietor of the Annapurna Films and also a partner of the Anna-purna Exhibitors died. Petition was filed by party No. 1 to bring not only the partners of Annapurna Exhibitors on record as the legal representatives of the firm but also to bring on record the wife and children of R-5 as legal representatives. The learned Executive Magistrate after bearing the CrI. MP No. 1955/1978 dt. 15-12-1978. parties passed an order on 12-7-1978 allowing the petition. In doing so, the learned Magistrate, had observed that no hard and fast rule was laid down as to who would be the parties concerned and that besides the parties involved in the dispute other parties having interest in the subject-matter of the dispute and parties having connection with the possession of the subject-matter of dispute in some capacity or the other would also be impleaded as parties. He, therefore, directed that summons should be issued to the parties at the cost of the

petitioner. It is to be noted that this order was passed, in the first instance, without issuing notice to the petitioners herein. In answer to service of summons the petitioners herein appeared before the learned Magistrate and filed their written statements. Thereafter they have moved this Court by filing the present Criminal Miscellaneous petition for quashing the proceedings in M.C.B. 128/77 on the file of the Special Executive Magistrate at Hyderabad, on the sole ground that they should not have been impleaded as parties concerned to the proceedings without first being summoned and heard as to whether they are necessary and proper parties or whether they can be made parties either as legal representatives for being partners in the concern or as persons interested in the dispute. Mr. Kannabiran contends that except for sub-section (7) of Section 145 Cr. P.C., there is no other provision whereby a person could be impleaded as a party to the proceedings and sub section (7) provides only for bringing on record legal representatives of a deceased person. Therefore, he submits that, if really the learned Executive Magistrate wanted to bring the present petitioners on record he should have first summoned them to show cause as to why they should not be made parties. Making the petitioners parties and issuing summons to them without finding out from them as to whether they are necessary and proper parties or whether they are interested, in the subject matter of the dispute, is not correct and consequently the proceedings against the present petitioners should be quashed. I regret I cannot accede to the contention advanced by Mr. Kannabiran, Section 145 (1) Cr. P.C., provides as follows:- "Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or whether of the boundaries thereof, within his local jurisdiction, he shall make an order in writing} stating the grounds of his being satisfied."

From a reading of the first limb of this sub-section it becomes abundantly clear that the Magistrate has to look only to one aspect of the matter before passing a preliminary order i.e., whether he has satisfied himself from the police report or from other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof. At this stage the Magistrate is not concerned with the personalities involved in the dispute. The second limb of sub-section (1) of Section 145 Cr. P.C., provides that if the Magistrate is so satisfied about the likelihood. of breach of the peace he would pass the preliminary order and summon the parties concerned in such a dispute to attend his court in person or by a pleader. A plain reading of the second limb of Section 145 (1) would show that not only persons who have been made parties in the proceedings but also persons concerned in such dispute may be summoned by the Magistrate to attend his Court in person or by Pleader. Now it is well settled that in order to confer jurisdiction on the Executive Magistrate, it is necessary that preliminary order must be passed in the first instance and that preliminary order would be the order which would confer jurisdiction on the Magistrate. Once preliminary order is passed, the Magistrate acquires jurisdiction

and then it is for the Magistrate to issue summons to parties concerned in a dispute to attend his court in person or by Pleader on a specified date and time and to put in written statements of their respective claims. Moreover, sub-section (5) would make interpretation of mine more clear viz, subsection (5) provides that nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or had existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final. Therefore, it becomes clear from a reading of sub-section (5) that mere passing of order under sub-section (1) and summoning parties which in the opinion of the Magistrate are concerned with the dispute to attend his court would not preclude any party so required to attend or any other person interested from approaching court and showing that no such dispute has existed. Therefore, a close reading of Section 145 (1) and Section 145 (5) would show that not only persons who have been made parties in the original petition but also any person or any other person-interested can approach the Court and file an application to the effect that no such dispute exists. Moreover, Section 145 Cr. P.C. does not prohibit the Court from making any person a party to the proceedings initiated under it. Subsection (7), however, as pointed out earlier, applies only to cases of brining legal representatives on record. At this stage, I need not enter into the controversy as to whether the present petitioners, being the partners of R. 5 would come within the ambit of term "Legal" representatives., because I am disposing of this petition on the ground that, having regard to the provisions of sub-section (5) of Section 145 Cr. P.C., not only persons who have been made parties in the original petition but also others who are interested in the subject-matter can approach the court, or, the court can also summon them. The only grievance which appears to me after hearing Mr. Kannabiran is that the Magistrate ought to have summoned the petitioners herein before making them parties but, nevertheless, they have already appeared before the Court and have filed the written statement without raising this objection. Therefore, in these circumstances I am of the opinion that no useful purpose would be served by quashing the proceedings when the petitioners themselves, have already appeared before the court in response to the summons and have already submitted their written statement without making any objection specifically in their statement.

I see no substance in this petition. It is, therefore, dismissed.