



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3521]

THURSDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 8111/2024

Between:

1. THIRUMALARAJU SAMBAMURTHY RAJU @ SAMBARAJU, S/O GURUMURTHY RAJU, AGED ABOUT 77 YEARS, HINDU, RESIDENT OF BODDAVARA VILLAGE, S.KOTA MANDAL, VIZIANAGARAM DISTRICT.
2. THIRUMALARAJU VIJAYRAJU @ SEKHAR,, S/O SAMBARAJU, AGED ABOUT 45 YEARS, HINDU, RESIDENT OF BODDAVARA VILLAGE, S.KOTA MANDAL, VIZIANAGARAM DISTRICT.
3. PEDEREDLA RAMAKRISHNA,, S/O VENKANNAPATRUDU, AGED ABOUT 42 YEARS, HINDU, RESIDENT OF RAILWAY STATION ROAD, S.KOTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.

...PETITIONER/ACCUSED(S)

AND

1. PADALA VENKATAREDDY, S/O LATE VENKATAREDDY, AGED ABOUT 56 YEARS, RESIDENT OF S.KOTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
2. PADALA ADILAKSHMI, W/O VENKATAREDDY, AGED ABOUT 57 YEARS, RESIDENT OF S.KOTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
3. PADALA SIVANANDAREDDY, S/O VENKATAREDDY, AGED ABOUT 33 YEARS, RESIDENT OF S.KOTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.

4.PADALA SATISHREDDY, S/O VENKATAREDDY, AGED ABOUT 30 YEARS, RESIDENT OF S.KOTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.

5.THE MANDAL EXECUTIVE MAGISTRATE CUM TAHASILDAR, SRUNGAVARAPUKOTA MANDAL, VIZIANAGARAM DISTRICT.

6.THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI.

...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused(S):

1.T V SRI DEVI

Counsel for the Respondent/complainant(S):

1.VIJAYA KUMAR SATA

2.PUBLIC PROSECUTOR

The Court made the following:

ORDER:

The Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, "the Cr.P.C.") / Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, "the BNSS"), seeking to quash the docket order dated 26.06.2024 passed in Crl.M.P. No.21 of 2022 on the file of the learned Principal District and Sessions Judge, Vizianagaram, and consequently to set aside the order dated 12.12.2022 in M.C. No.55 of 2022 on the file of the Court of the learned Mandal Executive Magistrate, Srungavarapukota, Vizianagaram District.

2. Smt. T.V.Sridevi, the learned counsel for the petitioners submits that the proceedings initiated by the 5th respondent are wholly without jurisdiction, as they stem from a police report under Section 107 of 'the Cr.P.C.,' which is merely preventive in nature and does not empower the Executive Magistrate to decide questions of title or possession. However, the 5th respondent exceeded his authority by recording findings on possession and directing maintenance of status quo, rendering the impugned order illegal. It is further argued that the 5th respondent misconstrued Sections 145 and 147 of 'the Cr.P.C.'. Despite no proper initiation under Section 145 of 'the Cr.P.C.', the Magistrate ventured into determining possession, and the reference to Section 147 of 'the Cr.P.C.', is misplaced since the dispute does not relate to any easementary right but concerns title and possession. This reflects clear non-application of mind.

3. The learned counsel further submits that the dispute is already pending before a competent civil court in O.S.No.186 of 2022, and it is a settled principle that parallel criminal proceedings under Section 145 of 'the Cr.P.C.', should not continue in such circumstances. Hence, the impugned order is liable to be set aside.

4. It is also argued that the direction to maintain status quo amounts to granting a civil injunction, which is beyond the powers of the Executive Magistrate and within the exclusive domain of civil courts, thereby indicating patent lack of jurisdiction. Lastly, it is submitted that the revisional Court

passed a non-speaking order without assigning reasons, violating principles of natural justice. The initiation of criminal proceedings in a purely civil dispute amounts to abuse of process of law, justifying exercise of inherent powers under Section 482 of 'the Cr.P.C.,' to quash the impugned proceedings.

5. Sri A. Sai Rohit, the learned Assistant Public Prosecutor submits that the impugned proceedings are valid and within the jurisdiction of the Executive Magistrate, having been initiated on a police report indicating a dispute likely to disturb public peace. In such circumstances, the Magistrate is empowered and duty-bound to act under Section 107 of 'the Cr.P.C.,' to prevent breach of peace and maintain law and order. It is submitted that the powers exercised are purely preventive in nature and not intended to adjudicate title or possession. The observation regarding possession is only a *prima facie* assessment made for maintaining peace and does not amount to a final determination as in civil proceedings.

6. The learned Assistant Public Prosecutor further argues that the pendency of a civil suit does not bar the exercise of preventive jurisdiction. Proceedings under Section 107 of 'the Cr.P.C.,' operate independently to prevent disturbance of public tranquility, and therefore, the Magistrate rightly passed appropriate orders. It is also submitted that mere incorrect mention of statutory provisions does not vitiate the proceedings, as long as the authority has the substantive power to act. The direction to maintain status quo is only a temporary preventive measure and cannot be equated with a civil injunction.

Lastly, it is contended that the revisional court found no illegality in the impugned order, and the brief nature of the order does not render it invalid. Since both parties contributed to the situation affecting public peace, the Magistrate rightly exercised jurisdiction, and the petition, being devoid of merit, is liable to be dismissed.

7. A learned Single Judge of this Court in **A. Pullamma v. State of A.P.**,¹ at paragraph No.11 directed the parties therein to approach the Civil Court for their rights in respect of the disputed property by setting aside the order passed by the Mandal Executive Officer therein.

8. The Hon'ble Apex Court in **Ram Sumer Puri Mahant v. State of U.P.**,² observed that when a civil litigation is pending for the property about the possession, there was no justification in initiating parallel criminal proceedings under Section 145 of 'the Cr.P.C.,' on the principle that decree of the civil court is binding on the Criminal Court.

9. The Hon'ble Apex Court in **Amresh Tiwari v. Lalta Prasad Dubey**³, at paragraph No.14 observed that parallel proceedings under Section 145 of 'the Cr.P.C.,' should not continue when the parties are in a position to approach the Civil Court for adequate protection of the property during the pendency of the dispute.

10. The Hon'ble Apex Court in **Amresh Tiwari** *supra* at paragraph No.14 further clarified that in every case where Civil Suit is filed, Section 145 of 'the

¹2020 SCC OnLine AP 5088

²(1985) 1 SCC 427

³(2000) 4 SCC 440

Cr.P.C.,’ would never lie. It was further held that it was only in cases where Civil Suit was for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned could be applied for and granted by the civil court that proceedings under Section 145 of ‘the Cr.P.C.,’ should not be allowed to continue.

11. The Hon’ble Apex Court in **Anand Kumar Mohatta v. State (NCT of Delhi)**⁴, at paragraph Nos.24 to 27 held as under:

“24. We do not see how it can be contended by any stretch of imagination that the appellants have misappropriated the amount or dishonestly used the amount contrary to any law or contract. In any case, we find that the dispute has the contours of a dispute of civil nature and does not constitute a criminal offence.

25. Having given our anxious consideration, we are of the view that assuming that there is a security deposit of rupees one crore and that he has misappropriated the dispute between the two parties can only be a civil dispute.

26. In Indian Oil Corpn. v. NEPC (India) Ltd. [Indian Oil Corpn. v. NEPC (India) Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , this Court observed as follows : (SCC p. 749, para 13)

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

The Court noticed a growing trend in business circles to convert purely civil dispute into criminal cases.

27. We find it strange that the complainant has not made any attempt for the recovery of the money of rupees one crore except by filing this criminal complaint. This action appears to be mala fide and unsustainable.”

12. The Hon’ble Apex Court in **Jhummal v. State of M.P.**,⁵ at paragraph No.5 held as under:

“5. It may also be relevant to state that the respondent challenged the final order under Section 145(6) of the Criminal Penal Code in a revision before the Sessions Judge. On 27-9-1985, that revision was dismissed. After becoming unsuccessful in the proceedings under Section 145 CrPC and also before civil court in the suit for injunction, the respondent moved the High Court under Section 482 of CrPC to quash the proceedings under Section 145 CrPC. The High Court accepted the petition and quashed the proceedings by following the judgment of this Court in Ram Sumer Puri Mahant v. State of U.P. [(1985)

⁴(2019) 11 SCC 706

⁵(1988) 4 SCC 452

1 SCC 427 : 1985 SCC (Cri) 98] The operative portion of the High Court order is as follows:

"In view of the fact that civil proceedings in respect of the disputed premises is pending before the competent civil court, where interim reliefs have been prayed for and obtained, there appears to be no justification for continuing with the proceedings under Section 145 CrPC pending before the SDM.

Shri Tiwari learned counsel submitted that in case the plaintiff's suit is either withdrawn or dismissed, he would be left with no remedy. This submission cannot be accepted in view of the Supreme Court judgment in Ram Sumer Puri v. State of U.P. [(1985) 1 SCC 427 : 1985 SCC (Cri) 98]

Section 145 is intended to provide a special remedy for the prevention of breach of peace arising out of a dispute relating to immovable property. Its primary object is to maintain the public peace and not to decide disputes between the contending parties or adjudicate upon the rights of the parties to possession. Now, that the civil court is seized of the matter, it is desirable that such parallel proceedings in respect of the same subject matter and dispute should not be allowed to continue in the criminal courts as it amounts to an abuse of the process of the court which is one of the grounds for invoking Section 482 CrPC.

For the foregoing reasons, this petition deserves to be allowed. It is accordingly allowed. The proceedings under Section 145 CrPC pending before the Sub-Divisional Magistrate, Ujjain, along with the orders passed therein is, therefore, quashed."

13. The Hon'ble Apex Court, thus in a plethora of judgments, has categorically held that the police officer cannot submit report to the learned Executive Magistrate for passing orders under Section 145 of 'the Cr.P.C.,'/Section 164 of 'the BNSS.,' when there is civil case pending before any Court in respect of the immovable property. Similarly, the Executive Magistrate also cannot invoke the powers under Chapter IX of 'the BNSS.,' when there is civil case pending before the competent civil Court.

14. At the outset, it is not in dispute that the genesis of the impugned proceedings lies in a police report submitted with a view to initiate preventive action under Section 107 of 'the Cr.P.C.,' premised on an apprehension of breach of peace between the parties in respect of the subject property. The scope of the said provision, being confined to the maintenance of public

tranquility, does not extend to adjudication of civil rights, much less to determination of possession or title. However, a perusal of the impugned order reveals that the Executive Magistrate, while ostensibly exercising jurisdiction under Section 107 of 'the Cr.P.C.,' has embarked upon an enquiry akin to one contemplated under Section 145 of 'the Cr.P.C.,' and has recorded a categorical finding as to possession in favour of the "A" party, coupled with a direction to maintain status quo until orders are obtained from a competent civil court. Such an exercise travels beyond the permissible limits of preventive jurisdiction and assumes the character of an adjudicatory determination, which is impermissible in law.

15. It is further evident that the 5th respondent has adverted to Section 147 of 'the Cr.P.C.,' albeit erroneously, in the absence of any dispute pertaining to easementary or user rights. The invocation of an inapplicable provision, coupled with the assumption of jurisdiction under a provision not formally invoked, indicates patent non-application of mind and renders the impugned proceedings legally unsustainable. The Magistrate, being a creature of statute, is bound to act within the four corners of the authority conferred, and any transgression thereof vitiates the resultant order.

16. That apart, it is an admitted position that the dispute between the parties, insofar as it relates to title and possession of the subject property, is already *sub judice* before a competent civil court in O.S. No.186 of 2022. It is well settled that when a civil court is seized of such issues, parallel

proceedings under Section 145 of 'the Cr.P.C.,' ought not to be encouraged, as held by the Hon'ble Supreme Court in **Ram Sumer Puri Mahant** *supra* and reiterated in **Amresh Tiwari** *supra*. Continuation of the impugned proceedings, in the face of pending civil litigation, would lead to multiplicity of proceedings and the possibility of conflicting findings, thereby amounting to an abuse of process of law.

17. In the result, the Criminal Petition is allowed, and the docket order dated 26.06.2024 in Crl.R.P. No.21 of 2022 on the file of the learned Principal District and Sessions Judge, Vizianagaram, and the order dated 12.12.2022 in M.C. No.55 of 2022 on the file of the Court of the learned Mandal Executive Magistrate, Srungavarapukota, Vizianagaram District, are hereby quashed.

As a sequel, miscellaneous petitions, if any pending shall stand closed.

DR. Y. LAKSHMANA RAO, J

Date: 23.04.2026
KMS

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION No.8111 of 2024

Date: 23.04.2026

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