

Multani and anr. Vs. Shah Abdu Turab Qadari and ors.

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SooperKanoon Citation : sooperkanoon.com/376018

Court : Karnataka

Decided On : Nov-01-1961

Reported in : 1962CriLJ709

Judge : A. Narayana Pai, J.

Appellant : Multani and anr.

Respondent : Shah Abdu Turab Qadari and ors.

Judgement :

ORDER

A. Narayana Pai, J.

1. The facts of this case are not different from those in the case decided by this Court in Malkappa v. Padmanna 36 Mys LJ 800 : A.I.R. 1959 Mys 122. It is therefore contended on behalf of the petitioner that the Magistrate in the circumstances should have considered whether it was at all necessary for him to proceed with the enquiry Under Section 145 of the Code of Criminal Procedure.

The learned Counsel for the respondent relying upon another decision of this Court reported in Imambu v. Husseni 38 Mys LJ 192 : A.I.R. 1960 Mys 203 argues that the mere pendency of a civil suit does not take away the jurisdiction as a Magistrate acting Under Section 145 of the Cr IPC or absolve him from his duty of acting in the interests of public peace.

But, there is no conflict between the two decisions. In the latter case also his Lordship Hegde, J. points out that where there is a recent decision of a civil court regarding possession of the property in dispute, the criminal court should act in support of that decision. The decision of this civil court referred to by his Lordship in the said' judgment is not to be confined to final decisions in the suits by way of decrees. Even when an interim injunction is granted for the duration of a pending suit for perpetual injunction the civil court does come to a prima facie finding that the? party in whose favour it grants the injunction is in possession of the property, in respect of which the injunction is granted.

As in the case reported in 36 Mys LJ 800 : A.I.R. 1959 Mys 122 so in this case also one of the parties had already gone to a civil Court with a suit for perpetual injunction and obtained an order of interim injunction. The injunction was also not one made ex parte but had been made absolute after notice to the defendant. Although it is stated that on an appeal preferred to the District Court the injunction granted by the trial court has been stayed or its operation suspended, such a stay does not amount to setting aside the finding of the trial court on the question of possession. At the conclusion of the appeal the appellate court may vacate that finding in which case also there will' be a finding on the question of possession though it may be different from the one recorded by the trial court. There is, therefore, in this case a decision of a Civil Court which the Magistrate is expected to respect and sustain, without prejudice no doubt to his duty of preserving public peace.

2. I, therefore, set aside the order totally dismissing the. request of the petitioner to the Magistrate for staying his hands Under Section 145 of the Code of Criminal Procedure and direct him to examine the position in the light of the decision of this Court reported in'1958 Mys LJ 800 : A.I.R. 1959 Mys 122 and proceed according to law.