

Order...06
12.10.2022

Present:


Complainant in person.

Respondent No.01 to 06 in person alongwith counsel.

Abid Ali advocate submitted wakalatnama in favour of the respondents which is placed on file.

Counsel for the respondents argued on maintainability of the case.

File be put up for order on **19.10.2022**.


Sami Ullah
Civil Judge-I,
Orakzai (at Baber Mela)

Order...07
19.10.2022

Present:

Complainant No.1 in person.

Respondent No.1 in person.

This single order is directed to dispose of the point of maintainability of the instant complaint filed by the complainant/petitioner.

Brief facts of the instant complaint are that, the petitioners/complainants filed the instant complaint u/s 145 Cr.P.C against the respondents regarding the dispute concerning a piece of land.

Perusal of record transpires that parties are already in civil litigation pending before this court regarding the same disputed property. An interim injunction has also been granted in the pending civil case.

The purpose of proceedings under section 145 Cr. P. C is to meet an

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emergency as a stop gap arrangement to maintain peace and to enable the parties to seek their redress about title or claim of right to possess the subject of dispute in a Civil Court. Ultimate arbiter to determine title or right to possess the subject of dispute is the Civil Court and not the Magistrate. It does not suffice for proceedings Under/Section 145 that there would be a dispute but it is necessary also that there should be a dispute likely to cause the breach of peace.

The plain reading of Section 145 Cr. P. C. makes it abundantly clear that the mere disputes concerning the possession of immovable property etc. are not within the jurisdiction of magistrate. It is only those disputes which are likely to cause the breach of peace which fall within the jurisdiction of Magistrate for proceedings u/Section 145 Cr. P. C.

Considering the fact that whether complaint is maintainable u/s 145 Cr. P. C when the property in question is pending before and regulated by the civil court, the fact is admitted by the complainant in para one (1) of the complaint.

Keeping in view of the above, this court resorted to the authorities of the superior courts. In the authority (2019 P Cr. LJ 364), it has been held

that;

Sami Ullah
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Civil Judge/JM-I
Orakzai (Babar Mela)

"In section 145, nowhere provided that in presence of civil litigation, magistrate could not exercise his powers conferred on him... mere filing of suit did not debar the magistrate to proceed under section 145 Cr. PC unless interim Injunction was issued or receiver was appointed or decree was finally passed or possession was regulated by civil court."

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Perusal of record shows that civil court has already granted stay, which fact is categorically admitted by the complainant in his complaint.

In view of the above facts, this court is debarred from proceeding further with the complaint as the property is already regulated by the civil court through interim injunction. Reliance is placed on 2005 PCRLJ 1410 which reads as follows,


“Property regulated by civil court goes out of the jurisdiction of magistrate”.

If, in case and for the sake of arguments, the property is ordered to be attached or possession be altered, it will go against the status quo order of the court which has granted the same, that is why the instant complaint cannot be proceeded being not maintainable. Generally, civil and criminal cases can be proceeded parallel but in case of 145 Cr. P.C, when a civil court regulate the property through interim relief, the complaint is not maintainable because the relief envisage by 145 Cr. P.C, if granted, will go against the order of the civil court.

Hence, in the light of what is discussed above and keeping in view a civil suit being pending before this court and status quo been granted in the said civil suit; the instant complaint u/s 145 Cr.P.C, is hereby **Dismissed**.

File be consigned to record room after its necessary completion and compilation.

Announced:
19.10.2022


Sami Ullah
Civil Judge/JM-I,
Orakzai (At Baber Mela)