
(2020) 01 CAL CK 0044

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 23235 (W) Of 2019

James Protyush Mullick @ Sebastian Mullick

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 143, 420, 447, 467, 468, 471

Citation : (2020) 01 CAL CK 0044

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Shibaji Kumar Das, Manas Kumar Das, M. Hossain, Ashim Kr. Ganguly, Karabi Roy

Final Decision : Disposed Of

Judgement

Sabyasachi Bhattacharyya, J

Affidavit of service filed in Court today be kept on record. The grievance of the writ petitioner is that, despite the petitioner being the lawful owner of the property-in-dispute, the private respondent no.5 encroached on the property, for which a complaint was lodged with the Duttapukur Police Station on November 30, 2019, which is annexed as annexure P/3 at page 43 of the instant writ petition.

Learned counsel for the petitioner argues that the police are not taking appropriate steps pursuant to the complaint lodged by the petitioner for which the petitioner had to approach this Court with the present writ petition.

Learned counsel for the respondent-authorities files a report in the form of instructions, which indicates that the petitioner himself could not identify his own property and as such, demarcation is necessary in respect of the alleged trespassed property. However, it is submitted by learned counsel for the respondent-authorities that a First Information Report has already been registered on the basis of the complaint of the petitioner under Sections

143/447/420/467/468/471 of the Indian Penal Code.

The written instruction filed by the learned counsel for the respondent-authorities is kept on record.

Learned counsel for the private respondent no.5 points out that the complaint itself does not mention any allegation as regards assault, as submitted by learned counsel for the petitioner in Court today.

Upon hearing the parties and perusing the materials on record, the submission of the respondent no.5 seems to be correct insofar as there being no allegation of assault on the petitioner in the complaint lodged by the petitioner, which is the very basis of the present writ petition.

As far as the allegation of encroachment and prayer for recovery of possession are concerned, the writ court is not the appropriate forum for granting the remedy of restoration of possession, for which the petitioner has to approach an appropriate civil court.

As regards the FIR registered by the police, the same is sufficient to indicate that the police are investigating into the cognizable offences which have been alleged by the petitioner and it is expected that the police will do their best to investigate such allegations in proper manner.

In such view of the matter, considering the context of the complaint lodged by the petitioner, the primary remedy of the petitioner lies before a civil court. It appears, as indicated above, that the police are taking sufficient steps with regard to the criminal ingredients of the complaint of the petitioner and there is no scope for any premature apprehension as to the police not investigating sufficiently in the matter.

Accordingly, W.P. No.23235(W) of 2019 is disposed of with the aforesaid observations.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.