

(1985) 04 CAL CK 0007
In the Calcutta High Court
Case No : Criminal Revision No. 1490 of 1984

Jasiman Bibi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 397, 401, 482

Citation : 90 CWN 224

Hon'ble Judges : Jitendra Nath Chaudhuri, J

Bench : Single Bench

Advocate : M.P. Mukherjee, for the Appellant; R.B. Mahato for the State, for the Respondent

Judgement

Jitendra Nath Chaudhuri, J.—This application under Ss. 397, 401 and 482 Cr. P.C. is directed against an impugned order dated 21.7.84 passed by the learned Executive Magistrate, Alipore in M.P. Case No. 501 of 1984 by which the learned Magistrate refused to draw up proceedings under S 144 of the said Code.

2. The impugned order dated 21.7.84 reads as follows :

Hajira of the F.P. Seen the police report dt. 20.7.84. It appears that the dispute is civil nature. The remedy lies in the proper forum under appropriate provision of law. Hence the case is dismissed.

Sd/- S.C. Roy

3. It has been submitted by the learned Advocate appearing for the petitioner that the said order is cryptic in nature and does not set out any reasons why effect has not been given to the prayer in the police report in which it was prayed by the police that an order under S. 144 of the said Code may be promulgated on the case land except certain portion as mentioned therein. He has also submitted that the learned Magistrate has not applied his mind at all to the question as to whether there was any likelihood of the breach of the peace.

4. Learned Advocate appearing on behalf of the State has also submitted that the impugned order is very cryptic and that no reasons have been given for the conclusion that the dispute was civil in nature. He has submitted that it may be set aside but in that event the learned Magistrate should be directed to call for a fresh report from the police before deciding whether or not to draw up any proceeding under S 144 of the said Code.

5. In my view, the impugned order is a non-speaking order. Before coming to the conclusion that the dispute was civil in nature reasons ought to have been stated in the said order. Moreover, the question as to the likelihood or not of any breach of the peace has not been considered at all.

6. I accordingly set aside the said impugned order and remand the case back to the lower court which will, after calling for a fresh police report, proceed in accordance with law. On remand the matter should go before an Executive Magistrate other than the Learned Executive Magistrate who passed the said impugned order dated 21.7.84 in order to avoid any possible embarrassment to him.

7. It is made clear that the fact that the impugned order has not been set aside and the case has been remanded back will not in any way affect the direction to be made by the learned Executive Magistrate concerned after getting a fresh report from the police as to whether or not to draw up proceedings under S 144 of the said Code or under any other provisions of law.

8. The Officer-in-Charge, Joynagar Police Station is directed to see that pending the disposal of the matter by the learned Magistrate on remand there is no disturbance of the peace.

9. This application is thus disposed of.

10. Let the records be sent down as expeditiously as possible.

Order set aside.

Directions given.