
(2007) 03 CAL CK 0046
In the Calcutta High Court
Case No : C.R.R. No. 1149 of 2006

Kalpana Sen

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

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

Citation : (2007) 3 CHN 599

Hon'ble Judges : Sadhan Kumar Gupta, J

Bench : Single Bench

Advocate : Binoy Kumar Panda, for the Appellant; Ajay Debnath, for Opposite Party Nos. 2 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Sadhan Kumar Gupta, J.—This revisional application has been preferred u/s 482 of the Cr. PC against the judgment dated 20.2.2006 passed by the Id. Additional Sessions Judge, Durgapur in Criminal Motion No. 53 of 2005.

2. Case of the petitioner is that she is the lawful owner in respect of the plot No. 82813 under Khatian No. 316 of Mouza Mazedih. In order to protect her dwelling house, she wanted to construct a boundary wall on 31.5.2005. At that time the respondents forcibly stopped the said work. Finding no other way out the petitioner filed an application u/s 144 of the Cr: PC before the Id. Magistrate at Durgapur who was pleased to call for report from the B.L. & L.R.O. and the O/C Durgapur P.S. After receiving the report, Id. Magistrate was satisfied and was pleased to start a proceeding u/s 144 Cr. PC and directed the opposite parties not to disturb the peaceful possession of the petitioner in the land in question and also directed the O/C to enforce the order. Against the said order, respondent moved the Court of the Id. Additional Sessions Judge, Durgapur, who, by his impugned judgment, was pleased to set aside the order of the Id. Executive Magistrate passed in the proceeding u/s 144 Cr. PC. Being dissatisfied with the said order, this revisional application has been preferred. The petitioner

has claimed that the Id. Magistrate was perfectly justified in passing the impugned order, as there was apprehension of the breach of piece, as it appeared from the enquiry report of the officials concerned. Id. Additional Sessions Judge was not at all justified in ignoring those reports and in setting aside the order of the Id. Magistrate only on the ground that since the dispute is purely civil in nature so it should be decided in the appropriate civil forum. The order, as passed by the Id. Additional Sessions Judge, being illegal, the petitioner has prayed for setting aside the said order.

3. On the other hand, the opposite parties claimed that the Id. Additional Sessions Judge was perfectly justified in passing the impugned order. According to them, there was a longstanding dispute going on in between the parties over the use of the pathway and as such, Id. Additional Sessions Judge was justified in observing that the said dispute should be resolved in the Civil Court. They have prayed for dismissal of the revisional application.

4. I have heard the submissions of the Id. Advocate for both the sides. Admittedly, it appears that a dispute is going in between the parties over the use of a pathway. While the opposite parties are claiming that they have acquired a legal right for using the pathway as they are using the same for a long period, the petitioner claimed that the land exclusively belonged to her and she is the rightful owner of the said land and has got the authority to make any construction over the same. So it appears that there exists a clear dispute over the user of the said land amongst the parties. At the time of argument, my attention was drawn to the decisions reported in Gulam Abbas and Others Vs. State of Uttar Pradesh and Others, ; Md. Gulam Abbas and Another Vs. Md. Ibrahim and Others, and Md. Ibrahim v. City Magistrate, Varanasi, (1983) 2 SCC 153 . It is the settled position that an Executive Magistrate can pass a prohibitory order in a proceeding u/s 144 Cr. PC if he is satisfied that there exists an apprehension of breach of peace in between the parties in the locality. So far as the order of the Id. Magistrate is concerned, it appears that he, before passing the order, obtained report from the B.L. & L.R.O. as well from the O/C of the concerned P.S. After considering those reports, Id. Magistrate was satisfied to draw up a proceeding and passed an order. This order was an interim order, as the Id. Magistrate fixed another date for consideration of the show-cause by the opposite parties. The order to that effect, as passed by the Id. Magistrate appears to be perfectly legal. But at the same time, it appears that the Id. Magistrate also in fact allowed the petitioner to make construction of the boundary wall on the land in question and directed the O/C of the concerned P.S. to enforce the said order. This order, as passed by the Id, Magistrate is practically under challenge. In the decision reported in Md. Ibrahim v. City Magistrate, Varanasi, (1983) 2 SCC 153 it has been clearly observed by the Hon"ble Supreme Court that rival questions regarding rights to property and religious practices and celebrations raised in the context of order made u/s 144 Cr. PC can be decided only by suit. So far as present proceeding u/s 144 Cr. PC is concerned, it appears that there was clear dispute in between the parties

regarding the user of the land in question. This dispute can only be resolved in the Civil Court and not in a proceeding under sectional 44 Cr. PC. Id. Sessions Judge was perfectly justified in observing that the Id. Magistrate by passing the impugned order, practically gave finding/verdict at the interlocutory stage in favour of the petitioner in respect of the user of the land in question which is beyond his jurisdiction. To my mind, Id. Additional Sessions Judge is also justified in observing that the Id. Magistrate had no jurisdiction to decide that question and it is open for the parties to move the appropriate Civil Court for determination of the said dispute. After making such observation, Id. Additional Sessions Judge was pleased to set aside the order passed by the Id. Magistrate. I find no illegality in the said order and as such, I think that the order, as passed by the Id. Additional Sessions Judge in this respect should be confirmed.

5. In the result, the revisional application is dismissed on contest. The judgment and order dated 20.2.2006 passed in Criminal Motion No. 53 of 2005 is confirmed.

6. Send a copy of this order to the Id. Court below at once for information and necessary action.

7. Urgent xerox certified copy of this order, be handed over to the parties, if applied for.