
(2003) 08 OHC CK 0037

In the Orissa High Court

Case No : Criminal Revision No. 487 of 2003

Rama Chandra Mohapatra and Others	APPELLANT
Vs	
Rabindra alias Rabindranath Mohapatra and Others	RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 114(4), 144, 144(5)

Citation : (2003) CLT 1028 (Suppl CrI)

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : S.D. Das, for the Appellant; S.P. Mishra, for the Respondent

Judgement

Pradip Mohanty, J.—The Petitioners who are the first party members in C.M. C. No. 540 of 2003, a proceeding u/s 144 of the Code of Criminal Procedure ("Code" for short) of the Court of the Sub-Divisional Magistrate, Baripada, have challenged in this revision the legality or the order dated 2.7.2003 by which the learned Magistrate passed order u/s 144(5), Code of Criminal Procedure rescinding the order dated 11.6.2003 by which both the parties as well as public in general were restrained u/s 144 of the Code from entering into the disputed premises. The opposite parties are the second party members.

2. The lower Court proceeding was initiated on the basis of the petition filed by the Petitioners and the enquiry report submitted by the Inspector-in-Charge of Town P.S., Baripada, alleging apprehension of serious breach of peace between the parties. It appears that the dispute between the parties relates to scramble for management of a hotel originally run by their common ancestors. The learned Sub-Divisional Magistrate having initially passed order of restraint on 11.6.2003, subsequently, on the motion made by the opposite parties and upon hearing both parties, by the impugned order held the dispute to be of civil nature.

3. In course of hearing it is submitted by Mr. Mishra, learned Counsel for the opposite parties, that the Petitioners have already approached the civil Court for

adjudication of their claim over the property in dispute. However, despite an undertaking given to that effect, copy of the plaint brought to the notice of this Court at the time of hearing, was not filed along with other documents. It is needless to reiterate that parallel civil and criminal proceedings of the present nature are to be discouraged. Moreover, in the present case, the order of restraint was passed on 11.6.2003. Section 114(4) of the Code provides that no order under this Section shall remain in force for more than two months. In such circumstances, no fruitful purpose will be served in indulging the futile exercise of examining the legality of the impugned order. The parties are at liberty to seek appropriate remedy including an order of interim arrangement from the Civil Court.

4. In the result, the criminal revision is accordingly disposed of.

5. CrI. Revision disposed of.