

(2016) 04 CAL CK 0045
In the Calcutta High Court
Case No : C.R.R. No. 3535 of 2014

Susanta Sarkar

APPELLANT

Vs

Sudipta Sarkar

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147, 401, 482

Citation : (2016) 4 AICLR 721 : (2016) 3 CalCriLR 542

Hon'ble Judges : Sankar Acharyya, J.

Bench : Single Bench

Advocate : Mr. Sukanta Das, Advocate, for the Appellant; Mr. Swapan Mallick and Mr. Pravas Bhattacharyya, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sankar Acharyya, J.—This revisional application has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 by two petitioners Susanta Sarkar and Shibaji Sarkar against Sudipta Sarkar and the State of West Bengal as opposite party nos. 1 and 2 respectively challenging the judgment dated 22.08.2014 passed by learned Additional Sessions Judge, 7th Court, Paschim Medinipur in Criminal Revision No. 71 of 2014.

2. Petitioners of the revisional application filed an application under Section 147 of the Code of Criminal Procedure (in short Cr.P.C.) before the Executive Magistrate, Paschim Medinipur against the opposite party Sudipta Sarkar or drawing up a proceeding under Section 147, Cr.P.C. and to restrain the opposite party Sudipta Sarkar from causing disturbance against the right of petitioners to use a drain. Petitioners alleged that the opposite party obstructed the drain in front of his house throwing rubbish on the drain and on that issue there is every possibility of serious breach of peace in the locality.

3. The application of the petitioners was registered as Petition Case No. 380 of 2012 corresponding to M.R. Case No. 27 of 2013 in the Court of Executive

Magistrate, Paschim Medinipur. Learned Executive Magistrate called for reports from I/C Kotwali Police Station and B.L. and L.R.O. Medinipur Sadar and from Medinipur Municipality. Petitioners have annexed a copy of report dated 12.09.2012 of police officer of Kotwali Police Station with their revisional application. On 19.03.2013 learned Executive Magistrate passed an order drawing up proceeding under Section 147 (1), Cr.P.C. Subsequently, order dated 18.02.2014 was passed by learned Executive Magistrate for recording evidence. Said order was challenged by aforesaid Sudipta Sarkar (opposite party no. 1 herein) filing Criminal Revision No. 71 of 2014. Said revisional application was heard and the impugned judgment dated 22.08.2014 was delivered by learned Additional Sessions Judge, 7th Court, Paschim Medinipur. Said judgment has been challenged in this revisional application.

4. On perusal of the materials on record it appears that learned Additional Sessions Judge considered the fact that Title Suit No. 93 of 2013 between the parties relating to their land dispute is pending before competent Civil Court. Learned Judge also considered the reports submitted by B.L. and L.R.O. and I.C. Kotwali Police Station which reflect that the parties have been using the drain by passing water from their residences. In the impugned judgment it has been observed that it would be justified and proper to drop the proceeding of Misc. Petition Case No. 380 of 2012 (M.R. Case No. 27 of 2013) since the dispute is of civil nature and the O.Ps (petitioners herein) have every right to place the matter before the learned Civil Judge in Title Suit No. 93 of 2013 for the redressal of their grievances, if any. In the copy of enquiry report of police there is no whispering about apprehension of breach of peace on the issue of using the drain in question by the parties. In that report there is reflection of a long standing land dispute between the parties and on that issue there was incident of obstruction of the drain but subsequently the O.P. members opened draining system as before after cleaning the rubbish by labour and the draining system is running clearly.

5. In my opinion, for drawing up a proceeding under Section 147 (1), Cr.P.C. by a Executive Magistrate, his satisfaction is a must about apprehension of breach of peace. Since there was no reflection of any such apprehension in the report of police before the Executive Magistrate in the instant case, it was not proper for the Executive Magistrate to draw up the proceeding under Section 147 (1), Cr.P.C. That apart, Executive Magistrate is not authorised to adjudicate question of title in a civil dispute relating to the rights of the parties in connection with landed property. When competent Civil Court is in sei seen of the matter of land dispute between the parties and there was no report of police regarding bona fide apprehension of breach of peace on the issue of land dispute it was not lawful and proper for the Executive Magistrate to draw the proceeding under Section 147 (1), Cr.P.C. In my opinion, continuation of such proceeding is an abuse of process of Court. In the impugned judgment I find nothing illegal or improper in the observations made by learned Additional Sessions Judge. Therefore, I find no reason to interfere with the judgment under challenge in this

revisional application.

6. As a result, the revisional application is liable to be dismissed and accordingly it is dismissed.

7. Interim order, if any, stands vacated.