

GAHC010104082022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./263/2022

DALIM HUSSAIN MAZUMDER
SON OF LATE NUR UDDIN MAZUMDER
R/O VILL- SONABARIGHAT PT.I, P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE LEARNED PP, ASSAM

2:JHARNA BEGUM LASSKAR
W/O RABIJUL ALI LASKAR
R/O VILL- SAIDPUR PT.IV

P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN-788013

3:RABIJUL ALI LASKAR
W/O MUBARAK ALI LASKAR
R/O VILL- SAIDPUR PT.IV

P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN-788013

4:LABIB AHMED LASKAR @ RAJA
S/O RABIJUL ALI LASKAR
R/O VILL- SAIDPUR PT.IV

P.S. SILCHAR

DIST. CACHAR
ASSAM
PIN-788013

5:RAJIB LASKAR
S/O RABIJUL ALI LASKAR
R/O VILL- SAIDPUR PT.IV

P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN-78801

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLEMR. JUSTICE PARTHIVJYOTISAIKIA

For the Petitioner : Mr. D. Chakraborty,
Advocate.

For the Respondent
Nos.2, 3, 4 and 5 : Ms. R. Choudhury,
Advocate.

Date of Hearing : 11.05.2023.

Date of Judgment : 15.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. D. Chakraborty, learned counsel appearing for the petitioner. Also heard Ms. R. Choudhury, the learned counsel representing the respondent nos.2, 3, 4 and 5.

2. This is an application under Section 397 read with Section 401 of the Criminal Procedure Code whereby the judgment and order dated

08.03.2022 passed by the learned Addl. Sessions Judge (FTC), Cachar, Silchar in Criminal Revision No.68/2021 is put to challenge.

3. The present petitioner approached the Executive Magistrate with an allegation that on 17.08.2021, the respondents have entered illegally in to his land which he had purchased on 25.03.2013. The learned Executive Magistrate asked for a report from police. The report of police claimed that there was every possibility of breach of peace and tranquillity and prescribed drawing up of a proceeding under Section 145 and 146 of the CrPC. On the basis of the said police report, the learned Executive Magistrate had drawn a proceeding under Section 145 of the CrPC and attached the disputed land under Section 146(i) of the CrPC. The respondents were asked to appear before him and to file written statement.

4. The respondents did not file any written statement before the learned Executive Magistrate, rather, they filed a revision petition before the learned Addl. Sessions Judge challenging the said order of the learned Executive Magistrate. The learned Addl. Sessions Judge, allowed the revision petition and set aside the order of attachment passed by the learned Executive Magistrate.

5. Mr. Chakraborty has submitted that the order of the Executive Magistrate passed on 09.09.2022, is an interlocutory order and therefore, no revision lies pursuant to Section 397(2) of the CrPC. In order to buttress his point, Mr. Chakraborty has relied upon a decision of this Court that was delivered in *Safique Ali vs. Surajan Bibi*, reported in 2004 2 GLR 207. Paragraph 13 of this judgment is quoted as under:

“It is thus clear from Section 397(2) of the Code that no revision lies against an interlocutory order passed in any appeal, inquiry, trial or other proceeding. In Ashifaq Premlata's case (supra) it is held that an order of attachment passed on emergency under section 146(1) of the Code being an interlocutory order, no revision petition shall lie. In that view of the matter there can be no doubt that a revision petition does not lie against an order of attachment passed on emergency under section 146(1) of the Code.”

6. *Per contra*, Ms. Choudhury that the impugned order dated 09.09.2022 is not an interlocutory order. According to Ms. Choudhury, the said order is an intermediate order and therefore, revision lies. The learned counsel Ms. Choudhury has relied upon a judgment of Allahabad High Court passed in Munna Singh @ Shivaji Singh and Ors. vs. State of U.P. and Anr. In this judgment, it has been held as under:

“The distinction between the two, interlocutory and intermediary would be that the former does not bring about any consequence of moment and is an aid in the performance of the final Act. It does not affect any existing rights finally or to the disadvantage of either extremes. An intermediate order can touch upon the rights of the parties or be an order of moment so as to affect any of the rival parties by its operation. Such an order affecting the rights of a person or tending to militate against either of the parties even at the subordinate stage can be termed as an intermediate or an intermediary order.”

7. I have considered the submissions made by the learned counsels of both sides.

8. The order dated 09.09.2022 passed by the learned Executive Magistrate is based purely on a police report and the said order was passed because of emergency. The respondents were given the

opportunity to appear and to contest the said proceeding. But they did not do so and filed a revision petition instead. This Court is of the opinion that the order dated 09.09.2022 passed by the Executive Magistrate is an interlocutory order passed on the basis of a police report and because of an emergency. Therefore, the order dated 09.09.2022 is an interlocutory order and no revision lies against such an order. The learned Addl. Sessions Judge (FTC), Cachar, Silchar erroneously directed itself by entertaining the revision petition. Therefore, the impugned order dated 08.03.2022 passed by the learned Addl. Sessions Judge (FTC), Cachar, Silchar in Criminal Revision No.68/2021 is set aside.

9. The respondents are directed to appear before the Executive Magistrate and to file their written statement. Thereafter, the learned Executive Magistrate shall dispose of the matter in accordance with the procedure as laid down by law.

10. With the aforesaid direction, the criminal revision petition is allowed and disposed of.

Send back the LCR.

JUDGE

Comparing Assistant