





this Court in Cr. Misc. No. 39290 of 2009 and the said order was stayed by order dated 04.01.2010. Pursuant to the order passed in Cr. Misc. No. 39290 of 2009 by which the order granting permission to the petitioner no. 1 to open his shop was stayed, the Sub Divisional Magistrate by order dated 21.06.2011 directed the Executive Magistrate, Sadar, Gaya as well as the Officer Incharge, Civil Lines, Gaya to lock up the opened shop of the petitioner no. 1. However, consequential order as contained in Memo No. 195/Vidhi dated 23.03.2012 of the Sub Divisional Magistrate, Sadar, Gaya to the Executive Magistrate, Sadar, Gaya as well as the Officer Incharge, Civil Lines, Gaya has also directed that the shop be locked up and the keys be handed over to opposite party no. 2, holding him to be the caretaker of the Church. Learned counsel for the petitioners submits that the effect of the order of the High Court would be that status quo ante, as existing prior to the petitioner no. 1 being allowed to open his shop, should have been restored meaning thereby that the shop which was already closed has to be once again closed; however, by the present order, the Sub Divisional Magistrate has exceeded his jurisdiction by directing the keys of the shop to be handed over to one of the parties i.e., opposite party no. 2 after holding that he was the caretaker. According to learned counsel, such issue which was not decided in the order dated 21.06.2011, which itself was interlocutory in nature, could not have been expanded in the consequential communication dated

23.03.2012.

Learned counsel for the opposite party no. 2 submits that the petitioner no. 1 has no locus standi as he was not a party before the Sub Divisional Magistrate. He further submits that the Sub Divisional Magistrate has only passed an order by way of interim arrangement and since the opposite party no. 2 was the caretaker, but naturally, after closing the shop, the keys were to be handed over to him.

Upon hearing learned counsel for the parties, this Court is of the opinion that the Sub Divisional Magistrate, Sadar, Gaya was required to finally decide Cr. Misc. Case No. 675 of 2001 and not pass the order as contained in Memo No. 195 dated 23.03.2012, since he has decided the issue with regard to opposite party no. 2 being the caretaker and on that basis has also directed for handing over of the keys to him which this Court does not find to be just, proper and in accordance with law. After the order passed by the High Court, the shop which had been opened in favour of petitioner no. 1 had to be again put under lock in key as the situation was that before passing of the order in his favour which should have only be restored. The objection of opposite party no.2 that petitioner no. 1 was not a party in the proceeding below is not relevant since on the petition filed by petitioner no. 1, the order was passed in his favour which was challenged by the opposite party no. 2 before the Court leading to the case being remanded. Moreover, the order dated 23.03.2012 has been

issued ostensibly based on order dated 26.06.2011, though inexplicably after more than nine months.

Accordingly, the order dated 23.03.2012 passed by the Sub Divisional Magistrate contained in Memo No. 195 relating to Case No. 675/2001-02 is modified to the extent that the direction for handing over of keys to opposite party no. 2 holding him to be the caretaker stands set aside. The Sub Divisional Magistrate, Sadar, Gaya shall ensure that Case No. 675/2001-02 is disposed off expeditiously and latest within a period of one month from the date of production/receipt of a copy of this order by him, if already not disposed off, without being prejudiced by the order dated 23.03.2012.

It would be relevant to indicate here that the Court has not found any error in the order of the Sub Divisional Magistrate, Sadar, Gaya dated 21.06.2011 by which it has been held that the shop in question needs to be closed once again in view of the order of the High Court passed in Cr. Misc. No. 39290 of 2009 on 04.01.2010.

The application stands disposed off in the aforesaid terms.

(Ahsanuddin Amanullah, J.)

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