

20.11.2020

Ct. 13

Sd.

CRR 1116 of 2020

With

IA No. CRAN 1 of 2020

(CRAN 4131 of 2020)

(via video conference)

Tapan Das Adhikary & Ors. vs. State of West Bengal & Ors.

Mr. Bratin Kumar Dey

..For the petitioners.

Mr. Prasun Kr. Datta

Mr. Rana Mukherjee

Mr. Nirupam Dhali

..For the State.

The petitioner undertakes to affirm and stamp the petitioner as per the Rules within 48 hours of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

Heard learned counsel appearing for the petitioners and the State.

This application under section 482 of the Cr.P.C is filed challenging the order dated 22.07.2020 passed by the learned Sub-Divisional Executive Magistrate, Kharagpur, Paschim Medinipur in Petition Case No. 0286 of 2020 under section 144 of the Cr.P.C.

The petitioners are the owner and in possession of the case property. There has been dispute with the opposite party no. 2 to 4 and they filed a case under section 144(2) Cr.P.C before the Sub-Divisional Executive

Magistrate and while entertaining the application, the Executive Magistrate passed the following order:-

“Seen the petition U/S 144(2) Cr.P.C filed by Sri Sukumar Rana and Others against the OPs stated in the petition.

Heard the Ld. Advocate on behalf of the petitioner. BL & LRO Kharagpur I Block is directed to cause an enquiry over the suit land and submit detailed enquiry report before 24.08.2020.

O.C. Kharagpur Local P.S. is directed to maintain peace and tranquillity, law and order over the suit land and submit detailed enquiry report before 24.08.2020.

O.C. Kharagpur Local P.S is also directed to enquire that no illegal activity takes place over the suit plot and submit report.”

The order so passed on 22.07.2020 is under challenge before this Court. A report was called for by this Court, and pursuant thereto, the officer-in-charge of Kharagpur P.S. submitted a report that in compliance of the order of the learned Executive Magistrate, Kharagpur, Paschim Medinipur dated 22.07.2020, he caused communication to the parties asking them to maintain peace and tranquility, law and order over the suit land. Such report is not meaningful as such. The order passed by the Executive Magistrate has lost its force by now with its lapse of 60 days.

Be that as it may, the petitioners have challenged the said order that such an order cannot be passed by any executive officer without assigning reasons. Undoubtedly, the provision of section 144 of Cr.P.C is one of the mechanism that enables the State to main public peace as the provision is embodied in Chapter of the Cr.P.C dealing with the public peace and tranquility and in urgent cases for prevention of danger, the application of the provision has to be applied.

But in the given facts of the case and in consideration of the order passed by the Executive Magistrate as impugned in this revisional application, this Court finds that the Executive Magistrate has not assigned cogent reasons having given to understand that there is urgent need for passing such an order under the provision of section 144(2) of the Cr.P.C as there was apprehension for nuisance created in the locality at the suit land.

Therefore, this Court is of the opinion that mere apprehension is not enough for passing an order under section 144(2) Cr.P.C. There must be a clear and cogent reasons based on the credible materials to be placed before the concerned authority for invocation of provision of section 144(2) of the Cr.P.C. As such, stringent test has to be applied in order to avoid the possibility of abuse of such power given to the Executive and it should

not be passed to the detriment of the fundamental freedom of a party.

Thus, in the given facts of the case and in consideration of the order impugned and having regard to the guidelines embodied by the Supreme Court in Anuradha Bhasin reported in (2020)3 Supreme Court Cases 637, and in further consideration of the decision Sushama Mukherjee & anr. Vs. State & ors. reported in (2007)1 CHN 890, this Court finds ground for setting aside the order impugned.

Accordingly, CRR 1116 of 2020 and all connected applications are thereby disposed of.

Urgent photostat certified copy of this order be given to the parties, if applied for.

(Shivakant Prasad, J.)