

S/L-18
19-11-2020
Ct-1
KOLE/RAJIB

CRR 1510 of 2020

In the matter of : Ather Parwaize & Anr.

.....petitioners.

Mr. Riaz Abedin,
Mr. Md. Karim Warsi,
Ms. Arpita Mondal,
Mr. Asif Dewan,
Md. Rahim Waris,

.... For the petitioners.

Mr. Rana Mukherjee, Ld. A.P.P.,
Mr. Sujata Das,

... for the State.

Heard the Learned Counsel appearing for the petitioner and also learned Additional Public Prosecutor for the State.

2. The grievance of the petitioner is that the Executive and Metropolitan Magistrate has passed an order on 03.03.2020 in Misc. Case No. 767 of 2018 closing the examination of the person mentioned therein and directing the petitioner to show cause as to why the proceedings initiated under Section 133 of the Code of Criminal Procedure shall not be dropped.

3. The then Executive and Metropolitan Magistrate called for a report from the police that led to a report being submitted. Mr. Prithvish Mistry who was the Police Officer involved in submitting the report was being examined before the Executive and Metropolitan Magistrate, while so

that Executive and Metropolitan Magistrate happened to be replaced by the person incumbent, he looked into the material papers and proceeded holding that there is no reason to record the evidence of Mr. Prithvish Mistry further because the matter does not relate to a public place. It was therefore that the impugned order was issued on 03.03.2020 closing the examination of Mr. Prithvish Mistry and directing the petitioner to showcase against dropping of proceedings initiated under Section 133 of Cr.P.C.

4. The submissions made on behalf of the petitioner is that the examination of the Prithvish Mistry should be permitted to continue and the matter has to go to its logical end to reach at a final conclusion.

5. I am unable to accept the aforesaid submission for reasons more than one. Firstly, the proceedings were initiated under Section 133 of the Cr. P.C. at the instance of the petitioner and what the Executive and Metropolitan Magistrate is proceeding to do on the basis of the order dated 03.03.2020 is to consider whether that proceeding needs to carry forward or is liable to be dropped. There is no inherent infirmity or jurisdictional error in that. Secondly and more importantly, I am unable to hold that the Executive and Metropolitan Magistrate's view is unfounded. I say so because the examination of the reliefs sought for in the application made by the petitioner before the Executive and Metropolitan Magistrate will unequivocally show that the reliefs sought for is in relation

to an area cannot be treated as a public place out within the format of Section 133 of the Cr. P.C. This is what emanates out of even the first relief claimed as part of paragraph 13 of that complaint. It is clarified that this observation by me is only for the purpose of adjudicating this application and it will be open to the Executive and Metropolitan Magistrate to consider such aspect well depending upon the submissions that may be placed by the petitioner before that Officer.

6. For the aforesaid reasons, there is no jurisdictional error or procedural infirmity in the order of the Executive and Metropolitan Magistrate issued on 03.03.2020 and having ordered the case to be taken up on 31.03.2020 to consider whether the proceedings under Section 133 Cr.P.C. is liable to be dropped. Obviously, the remedies that the petitioner may have for relief on the factual situation before any competent court or other authority would remain intact and would not be affected by this order. Having found that the challenge leveled against the order dated 03.03.2020 issued by the Executive and Metropolitan Magistrate, 10th Court, Calcutta does not stand, this application fails.

7. In the result, the application being CRR 1510 of 2020 is accordingly dismissed.

(Thottathil B. Radhakrishnan, C.J.)