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CRR No. 1548 of 2020

(Via Video Conference)

Anirban Karmakar
-vs-
Barun Ghosh & Anr.

Mr. Supratim Dhar
Ms. Sudeshna Das
... for the petitioner.

None
..for the State

In spite of service of notice upon the State of West Bengal on 20th October, 2020 and subsequently on 3rd November, 2020 after leave was granted by a co-ordinate Bench to move the application this day to the State of West Bengal, the State remains unrepresented. Therefore, I have no alternative but to take up the hearing of the instant revision.

In this application the petitioner has challenged the legality, validity and propriety of an order passed by the Executive Magistrate, Barasat, North 24 Parganas in M.P. Case No. 1332 of 2020 under section 144(2) of the Code of Criminal Procedure on 19th August, 2020.

The main grievance of the petitioner is threefold:

(1) The Executive Magistrate without being satisfied as to whether there was any necessity to pass any order of maintaining peace and tranquility in the locality, passed the impugned order on 19th August, 2020 directing the petitioner herein to maintain status quo in respect of the case property. (2) Though the learned Magistrate in the order impugned was of the view that in

order to adjudicate the dispute between the parties reports of the B.L and L.R.O, Barasat, and the police authorities were required, he did not wait for the reports before passing the impugned order. (3) The order was passed on 19th August, 2020 and the statutory limitation of the force of an order under section 144(2) of the Code of Criminal Procedure, though is limited to sixty days the next date was fixed by the learned Executive Magistrate on 10th November, 2020 ; thus the impugned order per se is illegal.

In support of his contention the learned advocate for the petitioner refers to various decisions of the Hon'ble Supreme Court as well as this Court. The decisions are :

(a) Babulal Parate –vs- State of Maharashtra & Ors. reported in AIR 1961 SC 884 where the Hon'ble Mudholkar, J. observed in paragraph 26 “ the language of s. 144 is somewhat different. The test laid down in the section is not merely “likelihood” or “tendency”. The section says that the magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger.”

(b) Madhu Limaye & Ors. –vs- Sub-Divisional Magistrate, Monghyr and Ors. reported in AIR 1971 SC 2486 where again the Hon'ble Supreme Court reminded of the duty of the Executive Magistrate regarding his objective satisfaction with regard to breach of peace lodged by the petitioner before him.

(c) Dayamay Bhattacharya –vs- Surya Kanta Sur & Ors. reported in AIR 1989 CrLJ 1651 wherein this Court held that it is the incumbent duty of the learned Executive Magistrate to record his satisfaction that there was breach of peace which necessitated initiating proceeding under section 144 of the CrPC so as to empower it to issue directions in accordance therewith.

(d) In Maula Bux Ansari and Ors. –vs- Ram Rup Sah reported in 1983 CrLJ 1215 it is observed by the Hon'ble Supreme Court that after expiry of the period of sixty days the impugned order does not have any force under the law.

Having heard the learned advocate for the petitioner and on perusal of the impugned order it is absolutely clear that the learned Executive Magistrate did not pen down any observation as to his objective satisfaction to the effect that if any restraining order be not passed, there would be serious breach of peace between the parties in respect of the suit properties. Without such observation prima-facie satisfaction of the executive magistrate the order impugned becomes illegal.

Moreover, the impugned order was passed on 19th August, 2020 already the statutory period and the limitation within which the impugned order might be in force, expires. Thus, the impugned order becomes non-est.

In view of such circumstances, the instant revisional application is disposed of with the observation that the order dated 19th August, 2020 passed by the Executive Magistrate, Barasat Sadar ,

North 24 Parganas has lost its force beyond the period of sixty days and becomes non-est. M.P. Case No. 1332 of 2020 is accordingly held to be drafted.

The instant revisional application is thus disposed of with the above order.

(Bibek Chaudhuri, J.)