

**23.06.2021**

Sl. No. 08

Srimanta

Ct. No. – 42

D/L

**CRR/255/2018**

**(Via Video Conference)**

In Re : An application under Section 401 read with 482 of the Code of Criminal Procedure, 1973.

**In the matter of : Artistry House Private Limited.**

... petitioner.

Mr. Somopriyo Chowdhury, Adv.,  
Mr. Sanket Sarawgi, Adv.

...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld. P.P.,  
Mr. Ranabir Roychowdhury, Adv.,  
Ms. Faria Hossain, Adv.

...for the State.

The instant criminal revision under Section 401 read with Section 482 of the Code is filed by the petitioner, a private limited company against the opposite party nos. 2 and 3 assailing legality, validity and propriety of an order dated 8<sup>th</sup> November, 2017 passed by the Learned Executive Magistrate, 10<sup>th</sup> Court at Calcutta in Case No. M-771 of 2016 thereby rejecting an application under Section 133 read with Section 145 of the Code.

It is not disputed that the opposite party no. 3 is a tenant under the petitioner-company where a restaurant business under the name and style of Golden Dragon Restaurant is being run. It is the allegation of the petitioner that the opposite party nos. 2 to 4 were creating nuisance and annoyance in the entire premises situated at 57A, Park Street by installing commercial exhaust fans facing towards a common courtyard on the back side of the said restaurant through which obnoxious gas from the kitchen are constantly

coming. This has caused serious injury to the residents of the said premises because they have to bear such pungent smell emanating from the said restaurant and blown away through the said exhaust fans.

In order to stop such continuous act of nuisance and annoyance the petitioner moved before the Learned Executive Magistrate, Calcutta a proceeding under Section 133 read with Section 145 of the Code in the year 2016. The said proceeding was registered as Case No. M-771 of 2016. On 8<sup>th</sup> November, 2017, the Learned Executive Magistrate refused to pass any order restraining the opposite parties from causing such nuisance and annoyance and the application was rejected. In the instant criminal revision the said order dated 8<sup>th</sup> November, 2017 is challenged.

I have heard Mr. Somopriyo Chowdhury, Learned Advocate for the petitioner and Mr. Saswata Gopal Mukherjee, Learned Public Prosecutor with Mr. Ranabir Roychowdhury, Learned Additional Public Prosecutor. It is needless to say that Chapter X of the Code deals with maintenance of public order and tranquility and the measures contained in Chapter X of the Code are temporary in nature. The petitioner's prayer for removal of nuisance under Section 133 of the Code was rejected in the year 2017. The Learned Advocate for the petitioner has not disputed that the opposite parties are still using the exhaust fans to pass obnoxious gas from the kitchen of the restaurant till date. The petitioner is still going on suffering such hazardous issue keeping the instant criminal revision pending.

Therefore, without going into merit of the instant case this Court is of the view that due to the passage of time the instant revisional application has lost its force and no relief can be granted in favour of the petitioner in the instant case. Therefore, the instant revision is **dismissed** on contest,

however, without cost. However, it is made clear that the petitioner is at liberty to file proper application before the Learned Executive Magistrate with all supporting documents against the opposite parties for immediate redressal of his grievances. It is also made clear that while disposing of the instant revision I have not gone through the merit of the case of the parties.

**(Bibek Chaudhuri, J.)**