

(Through video conference)

05 09.09.2021

Dd

CRR 279 of 2010

In the matter of : **Smt. Sarmistha Dutta**
Vs
State of West Bengal & Ors.

Mr. Rana Mukherjee, Id. APP
.... for the State

The matter is listed today for hearing as contested application. Mr. Rana Mukherjee, learned Public Prosecutor represents the State. The concerned Authority is requested to regularize his appointment in connection with this case. Learned counsel for the petitioner and respondent nos. 2 to 5 are not found available on call. The matter is taken up ex parte on its merit.

Instant criminal revision has been preferred under Sections 401 and 482 of the Criminal Procedure Code praying for quashing of impugned proceeding in M.P. Case No. 2140 of 2008 and order dated 23.12.2009 under Section 144 (2) of the Criminal Procedure Code passed therein by Learned Sub-Divisional Executive Magistrate at Barasat, North 24-Parganas.

In a nutshell, M.P. Case No. 2140 of 2008 has been filed by the present Opposite Party Nos. 2 to 5 under Section 144 (2) of the Criminal Procedure Code against the petitioner who is the Chairman of Ashokenagar Kalyangarh Municipality. It is the case

of the present petitioner that the Learned Executive Magistrate before whom the case was pending promulgated the order under Section 144(1) of Criminal Procedure Code on 02.09.2009 which continued for more than two months and, thereafter, instead of dropping the proceeding, which is not maintainable any further, has continued the same which is an abuse of process of law. The present petitioner has prayed for quashing of the proceeding and to pass such other order as may be deemed fit.

Learned Public Prosecutor submits that with efflux of time, the proceeding before the Learned Sub-Divisional Executive Magistrate at Barasat has become infructuous and necessary directions may be given so that the proceeding is dropped.

Perused the application for revision and the certified copy of the impugned order. It appears that on 02.09.2009 an order was passed by the Learned Executive Magistrate promulgating an order under Section 144(1) of Cr.P.C. He has, thereafter, directed to file affidavit against the Opposite Party.

According to Section 144(4) of the Cr.P.C. –*'No order under this section shall remain in force for more than two months from the making thereof.'*

Accordingly with passage of time, the proceeding pending before the Learned Executive Sub-Divisional Magistrate, Barasat in M.P. Case No.2140 of 2008 is not maintainable any further. The order passed on 23.12.2009 after promulgating the order dated 02.09.2009 therefore has no force. Accordingly, the said criminal proceeding lying before the Learned Sub-Divisional Executive

Magistrate at Barasat in connection with M.P. Case No. 2140 of 2008 is liable to be quashed and the order of stay is vacated.

The Criminal revision is allowed on merit.

Let a copy of this order be sent to the Sub-Divisional Executive Magistrate, Barasat, North 24 Parganas.

(Ananda Kumar Mukherjee, J)