

02.07.2021

Sl. No. 89

Srimanta

Ct. No. – 35

D/L

IA No.:CRAN/1/2021

in

CRR/606/2021

(Via Video Conference)

In Re : An application under Sections 401 read with Section 482 of the Code of Criminal Procedure, 1973 against the order dated 15.02.2021 passed by the Learned Sub-Divisional Executive Magistrate, Ranaghat, Nadia in M.P.Case No. 682 of 2020 under Section 133 of the Code of Criminal Procedure.

In the matter of : Sri Somnath Mitra.

... petitioner.

Mr. Parikshit Goswami, Adv.,
Mr. Mrityunjoy Goswami, Adv.,
Mr. Partha Sarathi Deb Barman, Adv.

...for the petitioner.

Mr. Madhusudan Sur, Adv.,
Mr. Subrata Roy, Adv.

...for the State.

A proceeding was initiated under Section 133 of the Code of Criminal Procedure, 1973 at the behest of the opposite parties against the petitioner before the learned Sub-Divisional Magistrate at Ranaghat, Nadia. On June 24, 2020, the learned Magistrate, on that application, directed the *status quo* to be maintained over the disputed property and further sought for a report from the Chairman, Ranaghat Municipality to make an inquiry into the alleged construction made by the petitioner and to submit a report on the next date of hearing.

It further appears that on January 6, 2021, the opposite parties did not appear before the learned Magistrate, though the petitioner was present. In such circumstances, the proceeding was dropped by the learned Magistrate.

On February 15, 2021, the opposite parties appeared before the learned Magistrate with a 'put up petition' and upon hearing the opposite parties only, the learned Magistrate restored the proceeding and revived the interim orders passed on June 24, 2020, with a direction that the petitioner should not go ahead with the alleged construction. A report of compliance was sought for from the local police station.

Challenging the said order dated February 15, 2021, this revisional application has been preferred before this Court. It is the case of the petitioner that the learned Magistrate was not justified in reviving the proceeding under Section 133 of the Code of Criminal Procedure, and restoring the interim orders passed on June 24, 2020, in the absence of the petitioner.

I find substance in the submission advanced on behalf of the petitioner. When the proceeding was dropped on January 6, 2021, the petitioner was present but the opposite parties were not represented. The learned Magistrate ought to have heard the petitioner before restoring the proceeding and reviving the interim orders.

In that view of the matter, the order dated February 15, 2021 along with consequential orders passed by the learned Sub-Divisional Magistrate, Ranaghat in M.P. Case No. 682 of 2020 is set aside. The learned Magistrate will hear the petition for revival of the proceeding in the presence of both the parties within a period of two weeks from date and consider the prayer for the revival of the interim order or any further order as the learned Magistrate deems fit and proper. It is made clear that I have not gone into the merits of the case. The learned Magistrate will be at liberty to decide the application for restoration and for passing interim order

having regard to the facts and circumstances of the case on merit.

The revisional application being C.R.R. 606 of 2021 and I.A. No. CRAN 1 of 2021 is, thus, **disposed of**.

All Parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)