

CRR 1792 of 2021

In re : An application under Article 227 of the Constitution of India.

In the matter of : **Sumit Chakraborty & Anr.**

..... petitioners

**Mr. Pankaj Halder
Mr. Pradip Kumar Das**

.....For the petitioners

The petitioner no. 2 filed an application being M.F. No. 1349 of 2021 under Section 144(2) of the Code of Criminal Procedure, 1973, before the learned Sub-Divisional Magistrate, Diamond Harbour, 24-Parganas (South) against the opposite party no. 1. On that application, the learned Magistrate by an *ex-parte* order dated July 14, 2021, directed the opposite party no. 1 not to disturb the peaceful possession of the petitioner no. 2 over the relevant property and also not to disturb the house repairing work.

The said order was challenged by the opposite party no. 1 before the learned Additional Sessions Judge, Diamond Harbour, 24-Parganas (South) in criminal motion no 192 of 2021, and the learned Additional Sessions Judge on August 5, 2021, stayed the operation of the order dated July 14, 2021, passed by the learned Magistrate in the Court below.

It appears that only one day before the said order dated August 5, 2021, was passed, the opposite party no. 1, along with five other persons again filed an application being M.F. No. 1569 of 2021 under Section 144(2) of the Code of Criminal Procedure, 1973, before the same Court with regard to the said selfsame property and obtained same nature of *ex parte* injunction against the petitioners.

The petitioners challenged the said order of August 4, 2021, before the learned Additional Sessions Judge, Diamond Harbour, 24-Parganas (South) by filing Criminal Motion 209 of 2021.

The learned Additional Sessions Judge by the order impugned in this application, rejected the prayer for stay of the operation of the order dated August 4, 2021.

In my opinion, the learned Additional Sessions Judge ought to have interfered with the order dated August 4, 2021, passed in M.F. No. 1569 of 2021, inasmuch as there was no occasion on the part of the learned Magistrate in the Court below to pass a injunction of same nature and order of same kind against the petitioners on August 4, 2021, when the learned Magistrate had passed the same kind of injunction order against the opposite party no. 1 in M.F. No. 1349 of 2021 on July 14, 2021, over the selfsame property.

In that view of the matter, the operation of the order dated August 4, 2021, passed in MF No. 1569 of 2021 is stayed till the disposal of the revisional application being Criminal Motion 209 of 2021.

Learned Additional Sessions Judge in the Court below shall make an endeavour to dispose of the said criminal motion preferably within a period of three months from date without granting any unnecessary adjournments to either of the parties.

The observations made in this order are, *prima facie*, in nature and the learned Additional Sessions Judge will decide the said case without being influenced by this order.

The revisional application being **CRR 1792 of 2021**, is disposed of.

All parties shall act upon the server copy of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)