

08.06.2022

Item No.12
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1229 of 2021

**Sukdeb Mondal & Ors.
versus
State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure.

Mr. Kallol Basu,
Mr. Ashim Kumar Chakraborty,
Mr. Snehasis Jana ... For the Petitioners.

Mr. Bidyut Kumar Ray,
Ms. Sima Biswas ... For the State.

Mr. Tauhid Khan,
Mr. Sirsendu Sinha Roy ... For the Opposite Party No.2.

The present revisional application has been preferred challenging the order dated 18.03.2021 passed by learned Additional District and Sessions Judge, Ghatal in Criminal Revision No. 23 of 2017.

The genesis of the said order relates to an order dated 04.07.2017 passed by learned Executive Magistrate, Ghatal in Misc. Case No. 82 of 2017 under Section 147 of the Code of Criminal Procedure.

Mr. Kallol Basu, learned advocate appearing for the petitioners submits that on certain false assertion, the learned Executive Magistrate on the basis of report submitted by the B.L&L.R.O. passed an order thereby giving a new right to the private opposite party which he was not entitled under the law. According to the learned advocate, the allegation of blocking the pathway is absolutely a false allegation and the

learned Executive Magistrate without resorting to any evidence being adduced passed the impugned order only on the basis of the report so submitted.

Learned advocate appearing for the applicant/opposite party no.2 vehemently opposes such contention of Mr. Basu and submits that the applicants were using the said pathway and the petitioners illegally restrained their free egress and ingress and as such, having no other option, the applicants resorted to such legal proceedings.

In course of submissions advanced before this Court, it was pointed out that civil case is pending between the parties which was also instituted at the instance of the applicant/opposite party no.2.

Mr. Basu submits that the connected application for injunction prayed for by the applicants was refused by the learned civil court. However, the said factum was not brought to the notice of the learned revisional court when such hearing took place.

I am of the view that right, title and interest are absolute jurisdiction of the civil court and the Executive Magistrate's order may be for the purposes of an interim measure and cannot decide the absolute rights of the parties. In view of the proceedings and orders of the civil court not being brought to the notice of the revisional court, I am of the opinion that the revisional court should freshly hear out the revisional application after all the documents of the civil court

are placed before the revisional court. Accordingly, the order dated 18.03.2021 is set aside.

The learned Additional District and Sessions Judge, Ghatal would rehear the Criminal Revision No. 23 of 2017.

The parties are directed to be present before the learned Additional District and Sessions Judge, Ghatal on 06.07.2022 at 10.30 a.m.

In the meantime, the **department** is directed to communicate this order to the learned revisional court.

Both the parties would be granted 30 days' time for filing their fresh affidavit, if required.

The learned revisional court will continue the hearing by affording at least one date in each and every week. However, the hearing should be concluded by 31.08.2022 and the court would be at liberty thereafter to pass order.

With the aforesaid observations, the revisional application being CRR 1229 of 2021 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)