

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2007 of 2022

Mainak Das

Vs.

State of West Bengal & Anr.

For the petitioner: Mr. Ayan Bhattacharya, Adv.,
 Mr. Biswanath Chatterjee, Adv.,
 Ms. Saheli Sen, Adv.,
 Mr. Sobhan Kumar Pathak, Adv.

For the State:-
 Ms. Faria Hossain, Adv.,
 Ms. Sujata Das, Adv.

Heard on: 24th June, 2022.

Judgment on: 24th June, 2022.

BIBEK CHAUDHURI, J. : –

This is an application under Section 482 of the Code of Criminal Procedure filed by the opposite party in a proceeding under Section 144(2) of the Code of Criminal Procedure for quashing of such proceeding registered as MP Case No.1747 of 2022 and order dated 20th May, 2022 in the said proceeding.

It is pointed out by Mr. Ayan Bhattacharya, learned Advocate for the petitioner that the application under Section 144(2) of the Cr.P.C was filed by the opposite party No.2 praying for an order restraining the

petitioner and his men and agents from removing any material, porcelain insulator from the schedule property illegally and dishonestly.

The Executive Magistrate, Barrackpore Sub-Division passed the impugned order on 20th May, 2022 directing OC Khardah P.S to inquire into the matter and submit a report and ensure that no illegal activities takes place in the schedule property without due process of law.

On perusal of the instant revisional application and the impugned order this Court is of the view that the instant revision can be disposed of here and now with the assistance of the learned P.P-in-Charge. In view of such circumstances, Ms. Sujata Das, learned P.P-in-Charge is requested to assist the court on behalf of the State.

Learned Legal Remembrancer, Government of West Bengal is requested to regularize the appointment of Ms. Sujata Das in the instant case.

Copy of the revisional application is served upon the learned P.P-in-Charge.

The application is taken up for hearing.

Mr. Ayan Bhattacharya, learned Advocate for the petitioner submits that Section 144 is provided to prevent disorders, obstructions and annoyance with a view to secure public weal by maintaining public peace or tranquility. Such orders are required to be passed during emergent circumstances. Bare recital about breach of public peace and tranquility is not sufficient to invoke the extraordinary power of Section 144 of the

Cr.P.C by the Executive Magistrate. Section 144 also cannot be used to establish individual right of a person. In support of his contention, Mr. Bhattacharya refers to a decision of the Coordinate Bench of this Court in **Mohan Kumar More vs. State of West Bengal & Ors.** reported in **E Cr. N 2009(3) 81 (Cal)**. In the above referred report the Coordinate Bench of this Court followed the decision of the Hon'ble Supreme Court in the case of **Madhu Limaye & Anr. vs. Sub-Divisional Magistrate, Monghyr & Ors.** reported in **AIR 1971 SC 2748**.

In **State of Karnataka & Anr. vs. Praveen Bhai Thogadia** reported in **2004 (4) SCC 684**, the Hon'ble Supreme Court held that the object of Section 144 of the Code is issued to legislative intention to preserve public peace and tranquility without lapse of time, acting emergently, if warranted, giving thereby paramount importance to societal needs by even overriding temporarily private rights keeping in view public interest.

So far as the present case is concerned, it is clear that the question as to right of the respective parties in respect of some property is the subject matter of consideration. In a dispute between two parties of individual nature having no iota of material on disturbance of public peace and tranquility, no order under Section 144 can be passed. Moreover, it is found from the certified copy of order sheet that the Executive Magistrate, Barrakpore Sub-Division only file in some copies in a physostyled order.

In **Sharmishtha Chowdhury & Anr. vs. State of West Bengal & Anr.** reported in **2018 CRI. L.J 359** a Coordinate Bench of this Court quote rule 183 of Calcutta High Court Criminal (Subordinate Court) Rules 1985 which reads as follows:-

“R.183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, others may be recorded under his direction by the Bench Clerk.” Rule 183 of the Calcutta High Court Criminal (Subordinate Court) Rules, 1985 is applicable to the Executive Magistrate when he acts under Section 144 of Cr.P.C.

In Paragraph 36 of Sharmishtha Chowdhury (supra) this Court has passed the following guideline which is applicable to the Executive Magistrate:-

“36. Accordingly, I deem it necessary to pass the following directions in exercise my powers of superintendence for future guidance of the criminal courts:-

(a) Judges/Magistrates shall record orders strictly in terms of Rule 183 of the Criminal Rules and Orders (Sub-ordinate Court Rules), 1985.

(b) Alternatively, in view of the technological advancement and the availability of personal computers/laptops to the judicial personnel, they may also transcribe their orders on the computers and take a printout thereof and upon affixation of their signature thereto, the said hardcopy shall be treated as a valid transcription of the order passed by the said court.

(c) Under no circumstances, any judicial officer shall take assistance of any external agency particularly police officers in the matter of recording and/or transcribing orders of the Court.

(d) Any breach of such duty shall invite departmental proceeding so far as the judicial personnel is concerned.”

The learned Magistrate has not followed the above guideline while passing the impugned order. Furthermore, in respect of dispute exclusively between two individuals no proceeding under Section 144 of the Code can be enunciated. Thus, the impugned proceeding being void is quashed.

The instant criminal revision is thus allowed on contest, however without costs.

(Bibek Chaudhuri, J.)