

CRR 3201 of 2019

In the matter of: Amarnath Rajoria

....Petitioner.

Mr. Dhananjoy Banerjee

... for the Petitioner.

Ms. Sreyashee Biswas

... for the State.

Mr. Dyutiman Banerjee

... for the Opposite Party No.2.

Ajoy Kumar Mukherjee, J. (Oral):

Being aggrieved and dissatisfied with the judgment and order dated 27.9.2019 passed by the learned Additional Sessions Judge, Fast Track Court-IV at Barrackpore, North 24-Parganas in Criminal Revision No.320 of 2019 arising out of order dated 26.7.2019 passed by the learned Executive Magistrate at Barrackpore, North 24-Parganas in M.P. Case No.2 of 2019 under Section 133 of the Code of Criminal Procedure, the present revisional application has been preferred.

Petitioner has contended that the petitioner is one of the co-sharers of the land measuring about 0.075 satak together with three storied building standing thereon within Holding No.2 situated at M.G. Road, Titagarh, within Ward No.5 under Titagarh Municipality. There is a 8 ft. wide passage in the northern side of the aforesaid property of the petitioner for ingress into and egress from the said property and that is the only passage leading to the main road.

The opposite party no.2 herein has set up one illegal and unauthorized 'Gumti' in front of northern side of the said passage encroaching almost entire portion of said passage, which also

creates public nuisance due to keeping various dirty substances over the said passage, causing health hazards to the petitioner and other family members including other co-sharers living at the said residential property.

The petitioner accordingly filed an application under Section 133 of the Code of Criminal Procedure before the learned Sub-Divisional Executive Magistrate at Barrackpore for removal of such nuisance being M.P. Case No.2 of 2019 and the learned Executive Magistrate was pleased to direct the local police authorities and the municipal authorities to submit report.

On 28.6.2019 the Executive Engineer of Titagarh Municipality submitted a report police also submitted report. Learned Executive Magistrate, after considering the report submitted by the police authorities as well as the Executive Engineer, pleased to direct removal of the nuisance under Section 133 of the Code.

Being dissatisfied with the said order passed by the learned Sub-Divisional Executive Magistrate dated 26.7.2019, the opposite party no.2 preferred an application under Section 397/399 of the Code of Criminal Procedure which was initially pending before the learned Additional Sessions Judge at Barrackpore and subsequently it was transferred to the court of learned Additional Sessions Judge, Fast Track Court-IV at Barrackpore and numbered as Criminal Revision No.320 of 2019.

After hearing both the parties and on perusal of record, the learned Additional Sessions Judge, Fast Track Court passed the impugned judgement setting aside the order passed by the court of learned Sub-Divisional Executive Magistrate at Barrackpore and

remitted the matter for fresh consideration by the Trial Court in accordance with law.

Learned counsel for the petitioner has submitted that the learned revisional court failed to consider that the opposite party no.2 duly appeared before the court but did not contest till final hearing and the learned revisional court is erred in coming to the conclusion that the petitioner managed the report submitted by the concerned police authorities as well as the municipal authorities. The revisional court was also erred in coming to the conclusion that by virtue of an unregistered instrument the opposite party became owner of the alleged 'Gumti' which is not the property of the person who executed the instrument. Learned Revisional Court did not at all consider whether the alleged illegal 'Gumti' is causing nuisance at the way of ingress and egress or not and has misinterpreted the scope of provisions of Section 133 of the Code. The said judgment is a perverse one and is liable to be set aside.

Learned counsel for the opposite party no.2 submits that necessary direction may be given to the Executive Magistrate for collecting report from the concerned authority, if he finds that the existing report is not sufficient for the disposal of the case.

During the course of hearing learned counsel appearing on behalf of all the parties agreed that a direction may be given to the learned Trial Magistrate for making a fresh consideration after giving opportunity to both the parties, keeping all the points open for both the parties they want to agitate before the trial court and also the matter may be directed to be disposed of within a specific time frame.

It also appears from the judgment passed by revisional court dated 27.09.2019 that the revisional court was of the view that Executive Magistrate disposed of the M.P. Case No. 02/2019 without giving information to other parties and as such principle of *audi alterem partem* has been violated in passing the order by Magistrate.

Having considered the facts and circumstances of the case and without going to the merits to the case, CRR 3201 of 2019 is disposed of with a direction upon the learned Sub-Divisional Executive Magistrate, Barrackpore, North 24-Parganas to give an opportunity to both the parties to appear and to give them an opportunity to raise all the disputed questions on the basis of available documents and to decide the matter i.e. M.P. Case No. 2 of 2019 afresh , keeping all the points open for decisions, within a period of three months from the date of communication of this order.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)