

D/L37
15.09.2022
Bpg.

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

C.R.R 118 of 2022

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Shiv Shambhu Biswas and others
Versus
The State of West Bengal and another

Mr. Kunaljit Bhattacharjee,
Mr. Alok Sah.
...for the petitioners.

Mr. Aditi Shankar Chakraborty,
Mr. Sourav Ganguly.
...for the State.

Mr. Kallol Nag,
Ms. Esha Acharya.
...for the opposite party no.2.

The welfare officer of the Child Welfare Committee of the concerned jurisdiction will submit a report after interacting with the child as to whether the child intends to stay with the father or mother. The said report must be laid down before the learned Civil Judge (Junior Division), Alipurduar.

Learned court will assess the same and thereafter decide as to whether the child should remain or go with the respective parent. Surprisingly, the Executive Magistrate has interfered in this type of dispute and issued search warrant Section 97 of the Code of Criminal Procedure which is beyond

the scope. Henceforth, the Executive Magistrate will not have any jurisdiction and it is either the learned ACJM or the jurisdictional Civil Judge will exercise its power in respect of custody of child.

So far as the custody of the child is concerned, Section 97 of the Code of Criminal Procedure it is categorically stated that the said provision of the Code of Criminal Procedure cannot be independently issued without a criminal case being registered earlier.

The custody of the child in this case would be decided by the Civil Judge (Junior Division), pursuant to the report submitted by the officer of the Child Welfare Committee, Alipurduar. The whole process must be completed by 15th November, 2022.

With the aforesaid observations, CRR 118 of 2022 is disposed of.

Pending application, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)