

05.01.2023

Item No.32
Ct.No.34
dc.

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

C.R.R. 376 of 2021

**Nirmalya Sarkar
versus
Subhash Chandra Sarkar & Ors.**

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

Mrs. Karabi Roy ... For the Petitioner.

Mr. Bidyut Kumar Roy,
Ms. Rita Datta ... For the State.

Mr. Asraf Mondal,
Md. Bani Israil ... For the Opposite Party Nos. 1 to 6.

The petitioner has prayed for quashing of the order dated 28.01.2021 passed by learned Sub Divisional Magistrate, Tehatta, Nadia in Case No. 1150 of 2015 wherein the learned Magistrate was pleased to drop the proceedings.

The grievance of the petitioner is that the learned Sub Divisional Magistrate, Tehatta, Nadia dropped the proceedings on the grounds that it was pending for a considerable period of time which is against the records of the case as the reports were not submitted which were called for in connection with the instant case.

I find that the subject-matter of the case relates to seizure pursuant to a search warrant under Section 94 of the Code of Criminal Procedure being issued. I do not find the viability of the issuance of the search warrant as no criminal case was pending. The learned Sub Divisional Magistrate, Tehatta, Nadia was adjudicating only the application under

Section 94 of the Code of Criminal Procedure. There must be a criminal complaint and offence being made out. Thereafter the provisions of Section 94 of the Code of Criminal Procedure are to be invoked. The same principle applies whether it is a Judicial Magistrate or an Executive Magistrate. The proceedings before the learned Sub Divisional Magistrate, Tehatta, Nadia, *prima facie*, is an abuse of the process of the court. As such, the prayers advanced in this revisional application cannot be acceded to. Thus, no interference is called for in this revisional application.

The petitioner would be at liberty to approach before the appropriate forum for release of the seized wooden logs/blocks.

With the aforesaid observations, the revisional application being CRR 376 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.)