

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 996 of 2014
With
CRAN 1 of 2023**

**Usha Shankar Bhattacharya & Anr.
Vs.
State of West Bengal & Ors.**

For the Petitioners : Mr. Usha Shankar Bhattacharya
(in Person)

For the State : Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

Heard on : 05.04.2023

Judgment on : 03.07.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application has been preferred under Section 482 of the Criminal Procedure Code by the petitioners against the opposite parties being aggrieved by the order No. 18 passed by Learned District & Sessions Judge, Fast Track I at Sealdah in Criminal Motion No. 10/2013 dated 23.12.2013 based on the following grounds:

“i) For that the Learned Judge erred by failing to take into consideration that nowhere it said in/ established by either P.R. that the passage /courtyard blocked by APs is Confirmed by investigations tenanted portion of A.P.s. as tenanted portion of A.P.s.

Nor at all Any supportive Documents by A.P.S could be given showing that they allowed said Passage as Bathroom or Courtyard as their tenanted portion – or at all Any Proof of their tenancy itself. Rather like the lower court of Ld. Executive Magistrate, revision court order also based only on AP's false claim, whose own tenancy status itself informed in main petition and application u/s 340 Cr.P.C., as highly questionable/ doubtful.

ii) For That Learned revision Judge also erred not only by failing to appreciate above informed fact that APs' Status of tenancy NOW technically lapsed due to their fathers (original tenants) demised over 5 years back and letter/s for premises vacation served already to them by power given by owner's agreement to petitioner.

That APs who dared to oppose even court order under claim of tenanted premises, they not at all even paid rent for past 5-10 Years (having no receipt) after their respective Father's Demises

iii). For that the Learned Judge erred by failing to take into consideration that petitioners submitted a detailed list of facts to be checked at the site and reported by P.S., as to there being common water tank/pump/common sweet water facilities and a caretaker type room in the back courtyard – whereby said area easily provable as common – which not denied by Police Reporter (P.R.) either.

As such it could be averred from principle of natural justice, that a common area of all tenants and passage leading to it can not be rented out to and/or blocked by any one tenant, even with owner's permission/concurrence.

iv) For that the Learned Judge erred by failing to take into consideration also that, even if tenancy of APs could be proved as existing, an inherent Principle of tenancy and/or natural justice was pointed out that such restriction of tenanted space, especially an obvious passage and courtyard with common facilities, does not hold in contingency.

That, especially since not permanent day to day ingress, but entry had been wanted by Petitioners only on Contingent/emergency/occasional basis, for which the tenancy rule of exclusive possession/use does not apply.

That an emergent situation has arisen due to collapse of normal entry path, and for which vital National/State level awarded/important Institute (B.E.S. University Sibpur) documents needed to be saved, as also due inability to repair, portions of the building posing danger to life and limb.

As such to deny only rare/occasional/contingent/emergency entry for repairs and saving vital state papers, even after court's own order and though petitioners informed that petitioner having suitable agreement with Landlord, surely merited more punishment u/s 188 IPC for longer term. But due denial of only a complaint by concerned court, such exemplary action unable to even begin.

v) For that, Ld. Executive committed act of self contradiction in that, if tenancy rights of APs seen by Ld. Lower Court as existing, then it may be questioned as to how Ld. Court itself ordered restraint u/s 144 Cr.P.C. – If such initial order passed without proper checking status of parties and/or in such case if that order itself illegal.

vi) For that the Learned Judge erred by acting out of jurisdiction, since u/s 340 Cr.P.C., the steps that may be taken in any application, are given only as – to examine the records (and when satisfied prima facie of reported events having occurred in said court) to give complaint letter/otherwise forward the matter in issue to Ld. A/CJM, where main matter to proceed in detail for prosecution u/s 188 etc IPC.

vii) That therefore u/s 188 IPC/ 340 Cr.P.C., it not mandated to call for repeat P.R. (when first P.R. already reported the event)/ see tenancy etc issues at this stage, but only to check if any order passed by Government violated and/or thereby if any public safety jeopardized by such.

viii) For That Learned Judge grossly erred in present case failing to appreciate that same court itself in original order said that... 'Ops not to obstruct' petitioners' ingress in any way without due process of law.

Thereafter 1st P.R. itself reported that O.P.s still obstructed petitioners on visit by putting lock and preventing physically under some excuses, (ie without due process of law) with police officer present and asking APs/ conveying court order to remove such (instead of applying to said court for restraining petitioners if APs had any valid ground).

All this clear case of taking law in own hands as per APs past practice reported, ie Government order violation and Contempt of court if not also obstructing public servant from executing duty.

ix) For That Learned Judge grossly erred in present case failing to appreciate that when the APs have demonstrated such blatant disregard for order of a court of law/ instruction on same by a Police officer present on spot etc, to what extent they daring/ what power they wielding locally, and how great must be their intimidation of much helpless petitioners, in restraining latter from residence for over 6 years despite such court orders.

x) For That Learned Judge grossly erred in present case by failing to appreciate all thus facts and that hence, unless the opposite parties are restrained / meted exemplary punishment by appropriate order of Court for all above and including Contempt of court also, not only APS but also the Criminal elements of society will be grossly encouraged to similarly disobey court orders/ rule of law, as at present seen all round.

xi) For That, revision judge failed to note under what law sections which cases pursued. While the original case and the revision were filed under S/340-341/ 399 CrPC etc, essentially to seek concerned public servant's (ie Ld. Executive Magistrate) complaint, Ld. ADSJ

FTI, Sealdah treats this itself as a case under s / 188 IPC, and thus passed erroneous judgment and order.

xii) For that ld. Revision judge passed order under fully wrong law section 'quashing – process u/s 188 IPC', whereas the case itself and process were u/s 340 CrPC.

xiii) Learned Judge grossly erred in present case as not taken into account all above and that not only the appellants being restrained from their residence shelter for over 6 years by APs' such illegal actions regardless of law, are suffering injustice by reason of the impugned order, but also it reported that most vital National/State level awarded/important documents perishing due all such delay.

17) That, in the interest of Constitutional imperative on expedient justice, kind attention of Ld. Court is also drawn to s/340 Cr.P.C. second part, where it mandated that if lower court does not take any action as per s/340, then higher court can directly provide-complaint letter to overcome restriction u/s 195 Cr.P.C. to allow public justice to proceed.

Further, Hon'ble Supreme court ruled it imperative for courts to provide such in interest of Public justice."

2. The petitioners based on the aforesaid grounds have claimed the following reliefs from this Court:

"i) Set aside/revise the order No. 18 Dated 23.12.13, passed by Ld. AD & SJ Fast Track First Court, Sealdah, in case No. Criminal Motion 10/2013, thereby or otherwise

ii) Set aside/revise the order Dated 02.08.11 by Ld. Executive Magistrate, Sealdah in Case No. MP 2994/2010 and/or otherwise

iii)After examining all facts, reasons, mistakes of lower courts etc. herein—above shown, or as in; records of the matter, draw up a complaint against the Accused; Parties u/s 340 Cr.P.C. to prosecute

u/s 188 IPC for violating Govt order, directly as per provisions of s/340 Cr.P.C. since lower court not done and/OR

iii) otherwise forward the matter in issue directly to Ld. A/CJM, Sealdah for prosecuting A.P.s u/s 188 IPC, for obstructing petitioners despite L.C. order to contrary, as per provisions of s/340 Cr.P.C. since lower court not done/rejected;

iv) draw up a proceeding against the Opposite Parties for Contempt of court also not taken by lower court.

v) and/or considering the gravity of the situation pass necessary order on an urgent and emergency basis under Section 173 CrPC directing for Further investigation in the matter for obtaining correct facts at locale,

vi) In the Meantime issue show-cause/interlocutory order to APs and/or otherwise restrain them or/and their men and associates from causing/abetting any further damages at site/scheduled property and/or

vii) In the Meantime, restrain APs or/and their associate from causing any obstruction, disturbances or any other inconvenience with regard to Peaceful and smooth ingress and egress of the petitioners to the common backyard through its only passage in the property, only occasionally to asses if any as above said done and/or evidence etc destroying

viii) pass other order/s as deemed fit for justice.”

3. The petitioners had filed a complaint against the Opposite Party no. 1 & 2, which was forwarded to the Court of Learned Executive Magistrate, Sealdah by the S.I. of Narkeldanga P.S. on 17.01.11 in reference to M. P. Case No. 2994 of 2010 under Section 144(2) of the Criminal Procedure Code which states as follows:

“Sir,

See the attached ptn. of (1) Smt. Asmita Bhattacharjee, W/o - Sri Usha Shankar Bhattacharya of 20A, Rajendra Lal Street, 2nd floor, Kolkata – 700006, (2) Sri Usha Shankar Bhattacharya, S/o – Late A. P. Bhattacharya of 20A, Rajendra Lal Street, Kolkata – 700006 Vs. (1) Sri Sushanta Saha, S/o – Late Hari Narayan Saha of 20A, Rajendra Lal Street, Kolkata – 700006, (2) Sri Susenjit Ray @ Noton, S/o – Late Prabodh Ranjan Ray of 20A, Rajendra Lal Street, Kolkata – 700006, (3) Sri Sujit Ray of 7A, Rajendra Lal street, Kolkata – 700006 this is to submit before your honour that local enquiry was caused over the ptn.

During enquiry both the petitioners were contacted and examined them. They reported same, as mentioned into the petition.

During enquiry had been to the schedule premises contacted with the O.P. No. 1 and 2 and communicated them the order of Learned Court and asked them to comply the order of your honours Court. But the O.P. No. 3 could not be contacted. Visited the schedule premises being identified by the petitioner as well as the O.P.

Enquiry revealed that the schedule premises is an old dilapidated, three storied building having one main stair case northern side of the said building which is also damaged. O.P. No. 1 and 2 are the tenant of the said building, ground floor, Eastern and Northern side respectively since long. Both the O.P. stated that they are staying at their respective portion since their birth and their fathers were the tenants of Late Ajit Kr. Chakraborty, owner of the schedule premises. The O.P. no. 1 also stated that a portion of the 1st floor of the said building is under their tenanted portion. Where as petitioner no. 1 is the tenant of 2nd floor of the said building though he is claiming himself as a

successor of the schedule premises and a probate case is pending with Smt. Chabi Banerjee.

Enquiry also revealed that petitioners used to go their 2nd floor through the northern side balcony of 2nd floor attached to the stair case, Northern side of the building. But the said entry route has been stopped due to collapse of their balcony in the night of 01.10.2007. Said night they were rescued by the fire brigade staffs and since then they are living some where else. At present there is no such passage to reach their portion. As such petitioners are trying to go to the common court yard of the said premises to fix a bamboo make ladder on the existing water tank at the said court yard to reach their 2nd floor for bringing their vital documents or what-so-ever.

On 08.01.11 both the petitioners along with some persons reached at the schedule premises in the fore noon and entered into the premises, petitioners requested O.P. No. 2 to open his bath room, situated Western side of the said premises but the O.P. No. 2 refused to open the door of the said bathroom on the plea that said bathroom is in his under his possession since long though situated in between boundary wall and premises wall, Western side of the schedule premises. O.P. No. 1 also refused to allow them through his bed room. Both the O.P. requested/ advised the petitioners to fix their ladder on the footpath, in front of the premises to go to the 2nd floor of the building but the petitioners refused to take such option. A hot altercation was taken place between the petitioner no. 2 and the O.P. no. 2, while the petitioner no. 2 was snapping photographs of the O.P. no. 2 on Rajendra Lal Street in front of the schedule premises without his consent. Considering tension between the party over the said both the party were asked not to do any wrongful act at the local and maintain peace at the local. Situation at the local is tensed and breach of peace at the local cannot be ruled out.

This is for your kind perusal and necessary.”

4. The Learned Executive Magistrate passed an order 02.08.11 in the aforesaid M. P. Case No. 2994 of 2010 which states as follows:

“Seen the P/R.

Heard Learned Advocates for both the parties. Also seen the P/R. It appears that the dispute arising regarding the collapse of a balcony at midnight as stated by the petitioner in her petition in Para – 5 and the said balcony was used by the petitioner as a pathway to her residence on the schedule premises.

But after the said collapse of balcony, petitioner is trying to find out an alternative way to reach to her room, instead of repairing the collapse balcony, obviously with due permission from the competent authority.

So the route cause of the dispute is the collapse of the balcony and O.P.s did not allow the petitioner to use their tenanted portion as the petitioner’s pathway for their personal reason and the court cannot compel any person to allow another to use their tenanted portion. So, from the above, I find that the order dt. 16.12.10 is not violated by the O.P. They only disallowed the petitioner to use their tenanted portion.

More that the entire matter is civil in nature.

Hence, the case is dropped and filed.”

5. Section 188 of the Indian Penal Code states as follows:

“188. Disobedience to order duly promulgated by public servant. - Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with

certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

6. Section 195 of the Criminal Procedure Code states as follows:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188

(both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections

of the Indian Penal Code (45 of 1860), namely, sections 193

to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive)

and 228, when such offence is alleged to have been committed

in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), [except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].

- (2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:*

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

- (3) In clause (b) of sub- section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.*

- (4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:*

Provided that-

- (a) where appeals lie to more than one Court, the Appellate*

Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

7. Section 340 of the Criminal Procedure Code states as follows:

“340. Procedure in cases mentioned in section 195. –

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be

exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorize in writing in this behalf.]

(4) In this section, " Court" has the same meaning as in section 195."

8. Section 341 of the Criminal Procedure Code states as follows:

"341. Appeal.-

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub- section (1) or sub- section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision."

9. Section 144 of Cr.P.C. states as follows:

"144. Power to issue order in urgent cases of nuisance of apprehended danger.-

(1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government

in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

- (2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.*
- (3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.*
- (4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.*
- (5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any*

order made under this section, by himself or any Magistrate subordinate to him or by his predecessor- in-office.

- (6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub- section (4).*
- (7) Where an application under sub- section (5) or sub- section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing. D.- Disputes as to immovable property.”*

10. The provision under Section 144 Cr.P.C. is invoked to prevent urgent cases of nuisance or apprehended danger and an order passed under this section remains in force for two months as enumerated in Section 144 (4) of the Cr.P.C.
11. The dispute between the parties is civil in nature with civil cases pending for adjudication concerning proprietary rights over the property in question which is beyond the jurisdiction of a criminal Court to decide.
12. The impugned order does not suffer from any illegality or impropriety. It has been rightly observed that the opposite parties could not have been compelled to grant entry or exit over/ or through their personally habitated portion of the property by anybody affecting their privacy and right of accommodation. Moreover, the Order passed by the Learned

Executive Magistrate had become ineffective legally due to statutory efflux of time. Accordingly, the provisions under Section 188 of the Indian Penal Code, and Sections 195, 340 and 341 of the Criminal Procedure Code are not considered in the instant case. There has been no violation of the Order dated 16.12.2010 as observed by the Learned Executive Magistrate in his Order dated 02.08.2011 and the same has been rightly affirmed by the Order of Learned District & Sessions Judge, Fast Track Court-I at Sealdah in Criminal Motion No. 10/2013 dated 23.12.2013.

13. Under such circumstances, the instant revisional application has become infructuous and is accordingly dismissed.
14. Accordingly, CRR 996 of 2014 stands disposed of.
15. Connected application, if there be any, also stands disposed of.
16. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)