

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2414 of 2019

Sudip Kumar Kundu.

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Pradyat Saha.

For the State : Ms. Rita Dutta.

For the Opposite Party no. 2, 3, 4 : None.

Heard on : 02.01.2023

Judgment on : 18.01.2023

Shampa Dutt (Paul), J.:

The revision has been preferred against an exparte order dated 25.09.2019 passed by Learned Sessions Judge, Murshidabad, in Criminal Revision No. 94 of 2019 arising from the order dated 08.07.2019 passed by the learned S.D.E.M. (Sadar) Berhampore, Murshidabad in Case No. 2214/2019, Under Section 145 of Cr.P.C. 1973.

The petitioners' case is that due to encroachment of his property by the opposite parties no. 2, 3 & 4 and apprehending breach of peace, he preferred an application before the learned Sub-divisional executive Magistrate who allowed the same directing the police to restrain both the parties to maintain peace in respect of the properties concerned.

The opposite parties challenged the order dated 08.07.2019 passed by the Learned Sub-divisional Executive Magistrate, before the Learned Session Judge, Murshidabad in Criminal Revision No. 94 of 2019.

The case of the petitioner is that there is a Title Suit between the parties in respect of the disputed property being T.S. 114/2019 pending before the Learned Civil Judge, Junior Division, 2nd Court, Berhampore, Murshidabad.

Mr. Pradyat Saha, Learned Counsel for the petitioner has submitted that the learned Sessions Court failed to apply his judicial mind. The learned Sessions Court ought to have given notice to petitioner. The learned Sessions Court reversed the well reasoned order of the Sub-divisional Executive Magistrate, without giving any opportunity of hearing to the petitioner.

The learned Sessions Court has violated the basic principles of natural justice and failed to appreciate that the interest of petitioner has been violated for non serving of notice.

The learned Session Judge, Murshidabad erred in law by restoring possession in the revisional application arising out of an order passed under Section 145 of the Code of Criminal Procedure.

The petitioner thus prays for setting aside of the order dated 25.07.2019 passed in Criminal Revision 94 of 2019 passed by the Learned Sessions Judge, Murshidabad.

Inspite of due to service none has appeared for the opposite parties no. 2, 3, 4.

Learned counsel for the State is present.

From the material on record the following facts are on record:-

- i) Order dated 08.07.2019 was passed by the Learned Sub-divisional Executive Magistrate **without hearing the opposite parties.**
- ii) On revision, the Learned Sessions Judge passed an order (Exparte) **without hearing the petitioner herein** (opposite parties in the revisions before the Sessions Court).
- iii) Title Suit No. 114 of 2019 filed on **11.06.2019** is pending between the parties in respect of the self same property before the Learned Civil Judge (Jr. Div), 2nd Court, Berhampore **wherein an order of injunction is in force.**

In Mohd Shakir Vs State of Uttar Pradesh & Ors. (2022 LiveLaw (SC) 727) the Supreme Court in SLP (Crl.) No. 5061/2022 on 26.08.2022 held:-

“Not much of elaboration on factual aspects is required in this matter. Suffice it to observe that while dropping the proceedings under Section 145 of the Code of Criminal Procedure, 1973 (‘CrPC’) because of the pendency of civil litigations, the learned Magistrate could not be considered justified in making any observations or returning any findings as regards rights of the parties qua the property in question. The learned Magistrate had proceeded to record the findings, as if the possession of the respondent on the questioned property was proved from the documentary evidence from the date of issuing notice and two months prior to the same and then, had also

proceeded to order that the second party would not interfere in the peaceful possession of the first party until the competent Civil Court passes final judgment in the matter, and that status quo shall be maintained.

In our view, in the given set of facts and circumstances, while dropping the proceedings under Section 145 CrPC, there was no justification for the learned Magistrate to make any such observations or to record any such findings or to issue any interim direction for maintaining status quo by the parties. This was more so because two civil suits had already been filed in relation to the property in question.

It is given out before us that in one of the suits i.e., Civil Suit No. 1161 of 2007, titled as “Zakir Ali v. Vaamanji and Others”, application for temporary injunction was granted by the Trial Court and an appeal filed by the present respondent against the said injunction order was disposed of by the order dated 29.10.2012; and now the civil suit is pending. The other civil suit filed by the present petitioner bearing number 692 of 2007 is also pending.

That being the position, the Magistrate ought to have left all the relevant aspects for consideration of the competent civil court and without recording any finding in the matter.”

The facts are very similar to the facts in the present case before this Court.

In Mohd. Abid & Ors. vs. Ravi Naresh & Ors., the Supreme Court in Special Leave to Appeal (Crl.) No.(s) 5444/2022, on 01.11.2022, held:-

“4. It is, however, an admitted fact that the petitioners have already filed a suit for injunction in which ex-parte ad-interim injunction has been granted by the Civil Court, Faizabad, Uttar Pradesh on 05.12.2020. Once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The interse rights of the parties regarding title or possession are eventually to be determined by the Civil Court.

5. In this view of the matter, and without expressing any views on merits on the rival claims of the parties, we dispose of this Special Leave Petition with a direction that the ad-interim order passed by this Court on 03.06.2022 shall continue to operate as an interim measure till the Civil Court, Faizabad passes an appropriate order after hearing both the parties.

6. To avoid multiplicity of proceedings, it is, however, directed that both the parties shall not create any third party rights or encumbrances over the property in dispute.”

In the present case a Title Suit being 114 of 2019 was filed on **11.06.2019** and is pending before the Court of Civil Judge (J.D.), 2nd Court, Berhampore, Murshidabad and there is an order of injunction in force.

The order under challenge before the Session Judge was order no. 1 dated **08.07.2019** in case 2214/2019 before the SDEM (Sadar) Berhampore, Murshidabad.

Inspite of the Title Suit pending between the parties with an order of injunction being in force, the petitioner herein moved the SDEM court with an application under Section 145 CrPC and obtained an Exparte order which has been set aside by Sessions Court by the order under revision. The order under revision needs no interference by this Court under its inherent jurisdiction as there has been no abuse of process of law/Court.

Thus following the observation of the Supreme Court in **Mohd Sakir Vs State of U.P. (Supra) and Mohd Atrid vs. Rani Naresh & Ors. (Supra)**, both the parties in the case shall not create any third party rights or encumbrances over the property in dispute till the dispute between the parties is decided in Title Suit 114/19 by the learned Civil Judge (J.D.) 2nd Court, Berhampore, Murshidabad.

Accordingly, Criminal Revision being CRR 2414 of 2019 stands dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Courts forthwith for necessary compliance being the Court of the Sessions

Judge and learned Civil Judge (Jr. Div.), 2nd Court, Berhampore, Murshidabad.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)