

D/L52
13.07.2023
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C.R.R.3108 of 2022

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

Rama Debnath
Versus
The State of West Bengal and others

Mr. Arun Kumar Maiti
Mr. Manabendra Nath Bandyopadhyay
Mr. R.R. Mohanty
Mr. Komal Shaw
Mr. Sumit Shaw
Ms. S. Ghosh
Mr. S. Saha.
...for the petitioner.

The grievance of the present petitioner relates to the order dated 25.07.2022 passed by the learned 2nd Executive Magistrate, Alipore, South 24 Parganas. The grievance of the petitioner is that the proceedings were dropped without considering the police report.

Mr. Maiti, learned advocate appearing for the petitioner submits that the very finding of the learned Executive Magistrate to the effect that since the civil suit is pending, parties are to resolve their dispute before the civil court.

I have considered the submissions of the learned advocate for the petitioner as also the order dated 25.07.2022 and I find that the learned Magistrate first of all did not ascertain regarding the factum whether a case is made out for issuing show cause against the opposite parties. As the police report was before the learned Magistrate then it was the obligation on the part of the

learned Executive Magistrate to consider the same.

So far as the proceeding under Section 107 of the Code of Criminal Procedure is concerned, the right, title and interest of the property cannot be decided is an admitted position of law. What is to be checked by the learned Magistrate is regarding the maintenance of peace and tranquility in the locality or in the area and/or restraining a person if he is committing breach of peace.

Learned Executive Magistrate will consider the police report and in that background of the aforesaid observations dispose of the application under Section 107 of the Code of Criminal Procedure.

The order dated 25.07.2022 is accordingly set aside.

With the aforesaid observations, CRR 3108 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.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)