

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1579 of 2020

Pranab Roy

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Mayukh Mukherjee.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For the Opposite Party No. 2 : None.

Hearing Concluded on : 28.11.2020

Judgment on : 05.12.2023

Shampa Dutt (Paul), J.:

1. The present revision has been filed praying for quashing of proceedings pending in connection with M. Case No. 463 of 2020 under Section 144(2) of the Code of Criminal Procedure now pending before the Court of the Learned Metropolitan and Executive Magistrate, 6th Court, Calcutta, and all orders passed in connection therewith including the order dated 16.10.2020 passed by the Learned Metropolitan and Executive Magistrate, 6th Court, Calcutta, in terms of sub section (2) of Section 144 of the Code of Criminal Procedure.
2. The petitioner's case is that the petitioner's mother namely Bijoya Roy is an aged lady residing in their ancestral property at premises No. 8B & 9, Abhoy Mitra Street, P.S. Shyampukur, Kolkata – 700005, along with the petitioner's youngest brother namely Pravat Roy. The petitioner herein is also a son of Bijoya Roy and often visits the said ancestral property to know the health of his ailing mother.
3. The Opposite Party No. 2 is the eldest brother of the petitioner herein and the Opposite Party No. 2 resides in the said ancestral property along with his wife namely Mita Roy and son namely Pushkar Roy.
4. That the Opposite Party No. 2 without the consent of the petitioner and his mother and youngest brother, who are also the legal heirs to the said ancestral property has been illegally letting out portions and parts of the said ancestral property lying and situated at 8B & 9, Abhoy Mitra Street,

P.S. Shyampukur, Kolkata – 700 005, on monthly rents to unknown persons for the purpose of running unlawful business and other commercial activities.

5. In such a situation various unknown miscreants are walking around unchecked in the said premise, out of whom many have indulged in misdemeanours, resulting in rampant theft of properties of antique value by such illegal occupants, and as such are causing damages and loss to the property.
6. On seeing such illegal acts of the Opposite Party No. 2 and his wife, the petitioner being on the right side of law, reported the matter to the local Police Station, Shyampukur vide a written complaint dated 28.09.2020.
7. As there was every apprehension of serious breach of peace and tranquility, annoyance, nuisance, bloodshed and loss of lives and properties in the said premises being 8B & 9, Abhoy Mitra Street, P.S. Shyampukur, Kolkata – 700 005 at the instance of the Opposite Party No. 2 and his men and agents, the petitioner along with his mother and youngest brother filed an application under Section 144(2) of Code of Criminal Procedure on 29.09.2020 being M. Case No. 410 of 2020 before the Learned Metropolitan and Executive Magistrate, 6th Court, Calcutta against the Opposite Party No. 2, his wife and son. The Learned Court after hearing was pleased to pass an order on 29.09.2020 in favour of the petitioner directing Shyampukur P.S. to send police report in time and to

remain vigilant so that no breach of peace takes place at the locale in the meantime and also fixed the next date on 09.11.2020 for police report.

8. The petitioner also communicated the order dated 29.09.2020 which was passed by the Learned Metropolitan and Executive Magistrate, 6th Court, Calcutta through his Learned Advocate by letter dated 05.10.2020 via registered post to the opposite parties.
9. That the Opposite Party No. 2 in spite of having knowledge of the said order, also preferred an application under Section 144 of the Code of Criminal Procedure against the petitioner and his mother and brother, **by suppressing the material facts** before the Court of Learned Metropolitan and Executive Magistrate, 6th Court, Calcutta, and the same was registered as M. Case no. 463/2020. The said application was entertained by the Learned Court and vide order dated 16.10.2020, the Learned Magistrate was pleased to direct an enquiry into the matter and submit a police report and was further pleased to direct that peace and tranquility be maintained.
10. It is submitted by the petitioner that the Opposite Party No. 2 has filed the said application under Section 144(2) of Code of Criminal Procedure in connection with M. case No. 463/2020 against the petitioner and his family by suppressing the previous existing order dated 29.09.2020 in connection with M. Case No. 410 of 2020 under Section 144(2) Cr.P.C. in respect of the same ancestral property which was also passed by the same Learned Metropolitan and Executive Magistrate, 6th Court,

Calcutta. The Opposite Party No. 2 has also obtained the order dated 16.10.2020 in connection with M. Case No. 463/2020 passed by the same Learned Court while the previous order under Section 144(2) Cr.P.C. was still in force in a proceedings filed by the petitioner against same property by suppressing the previous order dated 29.09.2020 in connection with M. Case No. 410/2020 which was filed by the petitioner against the opposite party no. 2.

11. From the materials on records, the following facts are before this Court:-

- i) The petitioner filed Misc Case 410/2020 under Section 144(2) Cr.P.C. in which vide order dated 29.09.2020 the court directed for a police report by 09.11.2020 and the police to remain vigilant that no breach of peace takes place at the locale in the meantime.
- ii) The said order was **communicated** to the Opposite Party No. 2.
- iii) **Suppressing** the said order the Opposite Party No. 2 filed another application under Section 144(2) Cr.P.C. in respect of the same premises being M-463 of 2020 in which vide order dated 16.10.2020, the Learned Magistrate held that the dispute was prima facie between the co-sharers of a joint family property and further directed the police to enquire and file a report and to see that there is no breach of peace, fixing 24.11.2020 for police report.

12. The order dated 16.10.2020 in M 463/2020 was passed even when the order dated 29.09.2020 in M 410/2020 was in force till 09.11.2020.
13. Learned counsel for the petitioner has relied up the Judgment in ***Acharya Jagdishwaranand Avadhuta and Ors. vs Commissioner of Police, Calcutta and Anr., (1983) 4 SCC 522.***
14. **In spite of service there is no representation on behalf of the Opposite Party no. 2.**
15. Learned Counsel for the State is present.
16. **Section 144 (5) Cr.P.C. lays down:-**

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

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(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.”

17. In the present case a subsequent Ex-parte order under Section 144(2) Cr.P.C. was passed in a separate proceedings in respect of the same property on the prayer of the opposite party, when the prior case and order therein was still in force (2 months) when the subsequent order was passed.
18. But the said order was passed under Section 144 (2) Cr.P.C., as the prior case was not brought to the notice of the Learned Magistrate, **which the petitioners could have done by taking recourse to section 144(5)**

Cr.P.C. Admittedly it was not done, and the present revision has been preferred.

19. A proceedings under Section 144 Cr.P.C. remains in force for not more than two months unless otherwise provided.
20. Both the proceedings were initiated in the year 2020 and thus the interference of this Court in this case is not required at this stage.
21. **CRR 1579 of 2020 is according disposed of.**
22. There will be no order as to costs.
23. All connected Applications, if any, stand disposed of.
24. Interim order, if any, stands vacated.
25. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
26. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)