

10.5.2023
Sl.2
Ct. No.3
SD

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

CRR 101 of 2023

In re: Sri Bhaskar Roy & Anr.

... petitioners.

Mr. Narendra Nath Das
Mr. Pragyadip Roy Basunia
Mr. Pratyush Adhikary
Ms. Binapani Singha
Mr. Hiranmoy Roy

... for the petitioners.

Mr. Aditi Shankar Chakraborty
Mr. Abhijit Sarkar

... for the State.

Mr. Jagadish Chandra Ray Sarkar
Mr. Dipankar Sen
Ms. Payel Choudhury

... for the Opposite Party No.2.

Affidavit of service filed by the petitioners in court today be taken on record.

This is an application for quashing of proceeding being Ptr/R/No.158/23 dated 16.3.2023 under Section 144(2) of the Code of Criminal Procedure pending before learned Executive Magistrate, Jalpaiguri.

The petitioners contended that the petitioners have been arrayed as opposite party nos.1 and 2 in the court below in the impugned proceeding. In the impugned petition before the court below, the opposite parties alleged that the opposite parties are the owners of landed property.

The petitioner in court below has also claimed that the petitioner/opposite party's bother was a bargadar under the petitioners' father since long and also claimed possession in the land.

It is alleged in the impugned petition that on 10.3.2023 in absence of the

present opposite party no.2, the present petitioners along with their henchmen have broken the fencing of land in dispute and entered into the land in question. He further contended that on such event, the present opposite party no.2 went to police station to lodge FIR but the police authority has refused to accept FIR stating that the dispute is a civil one and the police authority has directed the opposite party no.2 to file complaint before the appropriate authority.

Mr. Narendra Nath Das, learned counsel appearing on behalf of the petitioners, submits that the court below has wrongly entertained the petition without having cogent ground and directed the present petitioners to maintain peace and tranquility. The court below has failed to consider the question of ownership of the petitioner without sale deed and also failed to consider the bargadarship without any document in the name of opposite party and he failed to appreciate that the dispute is completely civil in nature. The court below has passed the impugned order in utter violation of Section 144(2) of the Code and issuance of direction has been made in a mechanical way without applying judicial mind. Accordingly, petitioners have prayed for quashing the said proceeding.

Mr. Jagadish Chandra Roy Sarkar, learned counsel appearing on behalf of the opposite party no.2, submitted that there is a dispute between the parties over the possession of land and for which there is serious apprehension of breach of peace as one party who is trying to obstruct the other in making entry in the property in question and as such, the order impugned does not call for any interference and the present application is liable to be dismissed *in limine*.

Mr. Abhijit Sarkar, learned counsel appearing on behalf of the State, submits that the court below is simply directed the Inspector-in-Charge of the concerned police station to keep close vigil in order to maintain peace and

tranquility over the area and as such, there is nothing wrong in the order impugned which calls for any interference by this Court.

I have considered the submissions made by the parties and on perusal of the order impugned, it appears that on the basis of the impugned application made before the court below, the concerned Magistrate has only observed that he needs to obtain a report from the BL&LRO Sadar, Jalpaiguri regarding possession of land and he also needs to get a report from the Inspector-in-Charge, Kotwali Police Station regarding the allegation as to whether there is apprehension of breach of peace, before promulgation of an order under Section 144 of the Code. Accordingly, he called for a report from both the authorities and in the meantime he has simply directed the local police authority to keep a close vigil so that peace and tranquility over the area is maintained. The order is passed purely as interim measure not upon any of the parties but upon concerned police authority. Court below has not yet promulgated any order under Section 144 nor made any observation or direction touching merit of the case and as such, the present application is premature and the order impugned does not call for any interference by this court at this stage.

In view of the above, CRR 101 of 2023 is dismissed.

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

(Ajoy Kumar Mukherjee, J.)