

M/L100  
04.03.2024  
Bpg.

C.R.R.1297 of 2023  
with  
CRAN 2 of 2023  
with  
CRAN 3 of 2023  
With  
CRAN 5 of 2024

Arup Das and another  
Versus  
The State of West Bengal and another

Mr. Anjan Bhattacharya  
Ms. Anita Shaw.  
...for the petitioners.

Mr. Sandip Kundu.  
...for the State.

Mr. Sanjib K. Mukhopadhyay  
Mr. Timir Kanti Biswas  
Ms. Aparupa Bhattacharya  
Ms. Nargish Parveen.  
...for the opposite party no.2.

The revisional application was preferred challenging the order dated 21.03.2023 passed in M.P. Case No.699 of 2023.

M.P. Case No.699 of 2023 was a proceeding which was initiated before the learned Sub-Divisional Magistrate, Barasat (Sadar), 24 Parganas (North) for recovery of a child by exhausting the provisions of Section 97 of the Code of Criminal Procedure. When no criminal case is pending between the parties, the Sub-Divisional Magistrate had no authority to hand over the child by exhausting the provisions of Section 97 of the Code of Criminal Procedure from a lawful guardian. The manner in which the proceedings were initiated before the learned Sub-Divisional

Magistrate, Barasat (Sadar), 24 Parganas (North) and the same was entertained by the learned Sub-Divisional Magistrate was in gross ignorance of the provisions of law as the same are powers vested with the civil and criminal courts. If any flexing of muscle or illegal act was done at the instance of the present petitioner, it was the duty of the Sub-Divisional Magistrate to refer both the parties to the civil court or the criminal court for custody of the child and the learned Sub-Divisional Magistrate is devoid of the powers to issue process under Section 97 of the Code of Criminal Procedure.

Having regard to the same, I am of the view that M.P. Case No.699 of 2023 was without jurisdiction and the same, as such, is quashed.

Accordingly, the revisional application being CRR 1297 of 2023 is allowed.

However, this order will not prevent the opposite party no.2 to approach an appropriate court of law for custody of the child.

The police authorities are directed that in case they have aided and assisted for implementing the order passed by the learned Sub-Divisional Magistrate, Barasat (Sadar), 24 Parganas (North), they would put the child to the original place from which they had recovered the child.

Pending connected applications, if any, are 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.)**