

03.01.2024
Sl.No. 40
Ct. 32
Amalranjan

CRR 3735 of 2017

Sri Srihari Mondal
Vs.
Sri Banamali Bera and ors.

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner, nor any accommodation sought for.

This case pertains to the year 2017. The nature of prayer and to avoid further delay, this revisional application is taken up for disposal on merit.

The instant revisional application has been filed by the petitioner under section 401 read with section 482 of the Criminal Procedure Code, 1973, challenging the impugned order dated 01.11.2017 passed by the learned Executive Magistrate, Kakdwip, South 24 Parganas in M.F. Case no. 828 of 2015 thereby dismissed the case filed under section 147 of the Criminal Procedure Code.

The brief facts of the case are relevant for the purpose of disposal of the case as follows:

The petitioner had filed an application under section 147 of the Criminal Procedure Code before the learned Executive Magistrate, Kakdwip, South 24 Parganas against the opposite party nos. 1-5 herein alleging the fact that the opposite party nos. 1-5 obstructed egress and ingress, cultivated land and also obstructing the sewerage of water

and/or drainage causing harm to the petitioner by continuous staging of water.

In the said petition, the petitioner had prayed for an order of direction to remove the obstruction with the assistance of police authorities. The said case was registered being M.F no. 828 of 2015.

It is the further contention of the petitioner that on 7.9.2016 the learned Executive Magistrate directed the Block Land and Land Reforms Officer to cause an enquiry into the matter and to submit a report upon hearing the case.

In pursuant of the said order the concerned Block Land and Land Reforms Officer submitted a report on 24.5.2016.

From the said report, it appears that the land in question is under the possession of the petitioner. Subsequently, on 14.10.2015 the learned Magistrate was pleased to pass an order, inter alia, "Cr is placed for hearing. Police report received. 1st party files hazira. The learned Court has only received the report of concerned O/C, Gobardhanpur Costal. The ld. Court has gone through the report. The Opp. are not found present. If the petitioner faces any obstruction stated in the petition, the obstruction may be removed for the interest of the petitioner. O/C, Gobardhanpur Coastal has been directed to look into the matter and comply with the order. The case be heard shortly in presence of both parties & inform accordingly".

Despite of that order, the opposite party nos. 1-5 became furious and forcibly started digging the earth by stopping the drainage of sewerage. As such the petitioner lodged a general diary before the local police station. However, no action has been taken by the police authorities.

Feeling aggrieved with inaction of the police authorities, the petitioner had filed a writ application before the Hon'ble High Court, Calcutta being WP no. 15905 (W) of 2017 with a prayer for mandatory direction upon the police authorities.

Upon hearing, the Hon'ble High Court observed that it shall be open to the petitioner to establish and enforce his right before the appropriate court of competent civil jurisdiction. The criminal proceeding instituted at his behest under section 107/116(3) of the Criminal Procedure Code shall be proceeded with utmost expedition and concluded at an early date. The writ petition was disposed of with the aforesaid observation. On the basis of said order of the Hon'ble High Court, Calcutta, the learned Executive Magistrate has disposed of the said application filed under section 147 of the Criminal Procedure Code stating therein that the application and the prayer of the petitioner is totally civil in nature and the instant case could not be tried in this court.

Being aggrieved with the said order the present petitioner filed this application with a prayer for setting aside the said order.

Upon perusal of the application along with the annexures thereto, this court finds that the nature of disputes as raised by the petitioner appears to be a civil in nature and that cannot be decided under section 147 of the Criminal Procedure Code. Accordingly, the learned Executive Magistrate has rightly dismissed the said application on the basis of observation made by the Hon'ble High Court, Calcutta in the writ petition being WP 15905 (W) of 2017.

As such this court do not find any infirmity or illegality or any jurisdictional error in passing such order.

Accordingly, the instant revisional application being **CRR 3735 of 2017** is, thus, dismissed.

Department is directed to send down the lower court records, if any, immediately.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)