

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4526 of 2023

Sk. Reyajul Ahemad @ Sk. Rejaul Ahamed

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Dipanjan Chatterjee.

For the State : Mr. Rudradipta Nandy, Id. APP
Ms. Puspita Saha.

Hearing concluded on : 28.11.2024

Judgment on : 28.11.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against an order dated October 05, 2023, passed by the learned Sub Divisional Executive Magistrate, Contai, Purba Medinipur, in connection with Misc. Case No. 468 of 2022, **thereby dropping the proceedings initiated under Section 147 of the Code of Criminal Procedure.**
2. **By the instant order the learned Executive Magistrate has held as follows :**

“Misc Case No. 468 of 2022
Date: 05.10.2023

.....The Ld. Adv. for the petitioner prayed for continuation of the previous order as there is no specific order passed by the Ld. Civil Judge, Contai Court and pleaded for rejection of the petition of the Ops.

On considering the submissions of the Ld. Advocates, perusing the reports of B.L. & L.R.O., Ramnagar-I, order of Ld. Addl. Sessions Judge, Civil Court, Contai and other relevant document, this Court is of the opinion that the case is civil in nature and the OP-1 has already filed a civil case being Case No.75 of 2023 which is pending for adjudication.

The patta holder contravened the Sec 49(1A) of WBL & LR Act, 1955 by transferring the suit property for 99 yrs as lease and the patta to be annulled by the competent court.

Hence, the case is not maintainable, thus the proceeding of the case is dropped.

Inform all concerned.....

Sd/-
Illegible.”

3. **Section 147 Cr.P.C., lays down:-**

“147. Dispute concerning right of use of land or water.-

(1)Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statement of their respective claims.

Explanation. - *The expression "land or water" has the meaning given to it in sub-section (2) of section 145.*

(2)The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3)If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4)When in any proceedings commenced under sub-section (1) of section 145 the Magistrate

finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1); and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.”

4. Considering the materials on record, it appears that the dispute between the parties admittedly prima facie is **civil in nature** and the learned Executive Magistrate has invoked the provisions of Section 147 Cr.P.C. in accordance with law **and on considering the police report filed before the learned Executive Magistrate, the Magistrate dropped the proceedings on specific findings.**
5. The State has placed a report as called for. **The report also states that the dispute prima facie is civil in nature.** The report be kept with the record.
6. **CRR 4526 of 2023 is thus dismissed.**
7. There will be no order as to costs.
8. All connected applications, if any, stand disposed of.
9. Interim order, if any, stands vacated.
10. Let a copy of the Judgment be sent to the learned trial Court for compliance.
11. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)