

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 324 of 2018

Barojahan Mondal @ Barjahan Mondal

Vs.

The State of West Bengal & Anr.

For the Petitioner :Mr. Prosenjit Mukherjee, Adv.
Ms. Tiyasa Ghosh, Adv.

For the State :Mr. Binoy Kumar panda, Adv.
Mr. Subham Bhakat, Adv.

For the opposite :Rajendra Banerjee, Adv.
party nos. 3, 4 & 5

Heard on : 08.06.2023, 19.07.2023, 23.08.2023,
29.08.2023, 18.09.2023, 10.10.2023

Judgment on :17th October, 2023

Bibhas Ranjan De, J.

1. Challenge is the order passed by Learned Additional Sessions Judge, Birbhum dated 25.07.2017 passed in Criminal Revision No. 44 of 2015.
2. Learned Additional Sessions Judge, Birbhum set aside the order dated 03.09.2015 passed by Learned Executive Magistrate, Rampurhat in Connection with Misc. Case No. 1463/2014 under Section 144/145 of the Code of Criminal Procedure (for short CrPC) on the ground of service of summons stating the ground of satisfaction of the Magistrate and also for not publishing the order in compliance with Section 145(3) of the CrPC.
3. The order dated 03.09.2015 directing opposite party to demolish the unauthorized wall was challenged in Criminal Revision No. 44 of 2015.
4. Learned advocate Mr. Prosenjit Mukherjee, appearing on behalf of the petitioner has submitted that not only summons was duly served upon the opposite parties in the proceeding before the Learned Executive Magistrate but also opposite parties appeared in the proceedings. In support of his

contention, Mr. Mukherjee has referred to the order dated 28.05.2015 of the proceeding before the Learned Executive Magistrate.

- 5.** Mr. Mukherjee has further submitted that publishing copy being affixed to some conspicuous place can be made only at the time of execution of the order.
- 6.** Ld. Advocate, Mr. Rajendra Banerjee, appearing on behalf of the opposite parties has argued that Section 145(3) of the CrPC has not been complied with by any order of the Learned Executive Magistrate. Mr. Banerjee further submitted that the dispute has been settled between the parties. Mr. Banerjee has referred to the report submitted by the concerned Revenue Inspector in compliance with the order of Learned Executive Magistrate.
- 7.** Ld. Advocate, Mr. Binoy Kumar Panda, appearing on behalf of the State has opposed the prayer of revision application.
- 8.** I am not agreeable with Mr. Mukherjee with regard to publishing order on a conspicuous place at or near the subject of the dispute, that it can be made only at the time of execution of order as there is no provision prescribed for execution of an order promulgated under Section 145 (3) of

CrPC. Therefore, no order is found in the record of the proceeding in connection with Misc. Case No. 1463/2014 regarding compliance of the Provision of Section 145(3) of the CrPC.

9. However, from the record, it appears that Learned Executive Magistrate called for a report from B.L.L.R.O Nalhati 1 who, in turn, got the land in question inspected by Revenue Inspector. Thereafter, B.L.L.R.O Nalhati 1 forwarded the said report to the Learned Executive Magistrate who perused the report and passed the order impugned. From the report of Revenue Inspector it is found that there was no illegal construction on plot no. 733 owned by the petitioner/ Barojahan Mondal. But, the Learned Magistrate passed an order directing opposite parties to demolish the disputed wall on the plot no. 710.

10. The order impugned challenged in the Criminal Revision No. 44 of 2015, in my view, is found to be de hors the law. Object of Section 145 of CrPC is to control a particular situation *vis-a-vis* land etc., i.e. where there is an apprehension of breach of peace, the Magistrate simply has to ascertain the physical possession of the land without referring to the title or right to possess. Such object of the enactment

had totally escaped the attention of the Learned Executive Magistrate. Actually, the impugned order had determined the right of the parties without following the procedure under Section 145 of the CrPC. Resultantly, I am unable to interfere with the order impugned.

- 11.** That being so, the instant revision application being no. 324 of 2018 is liable to be dismissed. Accordingly, CRR 324 of 2018 stands dismissed.
- 12.** Record of Learned Executive Magistrate, be transmitted back immediately.
- 13.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 14.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]