

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 759 of 2010

Judgment On: 31-03-2010.

Gourhari Das & Anr.

versus

State of West Bengal & Ors.

POINTS:

BREACH OF PEACE-Apprehension of breach of peace- Dispute is civil in nature- Whether Court can pass prohibitory order to maintain the peace and tranquility-Code of Criminal Procedure,1973, S.144

FACTS:

The petitioners apprehending breach of peace, over the question of possession of a particular plot of land and the dwelling house situated thereon, moved an application under Section 144 of the Code of Criminal Procedure against the opposite parties. Upon such application being filed, the Learned Magistrate called for a report from the Officer-in-Charge as also from the Block Land & Land Reforms Officer. On 9th of April, 2009 the reports were called for and the reports were submitted on 16th of February, 2010. The Learned Magistrate after considering both the reports found that although according to the police report, there is an apprehension of serious breach of peace over the dispute, according to the report of the Block Land & Land Reforms Officer, Moyna, the petitioners were not in possession of the plot in question. The Learned Magistrate observed that the dispute is absolutely civil in nature and directed the Officer-in-Charge of Moyna P.S. to maintain peace, keeping the said proceeding pending.

HELD:

The application under Section 144 of the Code in question was filed in the month of April, 2009. The whole object of the said provision is to meet an emergency and to

provide a speedy remedy so as to ensure the public peace and tranquility are maintained but in the case at hand the proceeding is kept pending for months together, which is absolutely an abuse of process of Court. In a case where the question is whether the power conferred under Section 144 of the Code is to be exercised or not, the Court is to see from the materials brought before it whether any case of apprehension of breach of peace over the alleged dispute has been made out or not. If Court finds that there is an apprehension of breach of peace, even if the dispute is civil in nature, in exercise of power conferred under Section 144 (2) of the Code of Criminal Procedure, the Court may very well pass prohibitory order to maintain the peace and tranquility. Of course, it is not within the jurisdiction of the Court, exercising power under Section 144 of the Code, to decide the question of right, title and interest in respect of any property. Para-3

For Petitioners : Mr. Samiran Mondal
For O.P. Nos. 2 & 3: Mr. Basudeb Bag
Mr. Ramdulal Manna
For State : Mrs. Krishna Ghosh

THE COURT:

1. The present petitioners apprehending breach of peace, over the question of possession of a particular plot of land ad the dwelling house situated thereon, moved an application under Section 144 of the Code of Criminal Procedure against the opposite parties. Upon such application being filed, the Learned Magistrate called for a report from the Officer-in-Charge of Moyna P.S. as also from the Block Land & Land Reforms Officer, Moyna. On 9th of April, 2009 the reports were called for and the reports were submitted on 16th of February, 2010. The Learned Magistrate after considering both the reports found, although, according to the police report, there is an apprehension of serious breach of peace over the dispute, but according to the report of the Block Land & Land Reforms Officer, Moyna, the petitioners were not in possession of the plot in question. The Learned Magistrate observed that the dispute is absolutely civil in nature and directed the Officer-in-Charge of Moyna P.S. to maintain peace, keeping the said proceeding pending.

2. Heard the learned advocates appearing on behalf of the parties. Considered their respective submissions.

3. It appears from the perusal of the records that the application under Section 144 of the Code in question was filed in the month of April, 2009. The whole object of the said provision is to meet an emergency and to provide a speedy remedy so as to ensure the public peace and tranquility are maintained but in the case at hand the proceeding is kept pending for months together, which is absolutely an abuse of process of Court. In a case

where the question is whether the power conferred under Section 144 of the Code is to be exercised or not, the Court is to see from the materials brought before it whether any case of apprehension of breach of peace over the alleged dispute has been made out or not. If Court finds that there is an apprehension of breach of peace, even if the dispute is civil in nature, in exercise of power conferred under Section 144 (2) of the Code of Criminal Procedure, the Court may very well pass prohibitory order to maintain the peace and tranquility. Of course, it is not within the jurisdiction of the Court, exercising power under Section 144 of the Code, to decide the question of right, title and interest in respect of any property.

4. Be that as it may, I direct the Learned Magistrate to dispose of the proceedings in accordance with law within two weeks from the date of communication of this order, after giving reasonable opportunity of hearing to the parties.

5. This criminal revisional application is, thus, disposed of.

6. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)