

**(2012) 10 CAL CK 0030**

**Calcutta High Court**

**Case No:** CRR No. 1322 of 2011

Smt. Mira Dikshit

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Oct. 17, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 144, 144(2), 145, 401, 482

**Citation:** (2013) 1 Crimes 268

**Hon'ble Judges:** Dipak Saha Ray, J

**Bench:** Single Bench

**Advocate:** Susanta Kumar Bhattacharyya, for the Appellant; Sandip Chakraborty, Advocate for the State, Mr. Jayanta Narayan Chatterjee and Mr. Anup Dasgupta, Advocates for the Respondent Nos. 2, 3, 4, 5 and 7, for the Respondent

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### **Judgement**

Dipak Saha Ray, J.

The present case arises out of an application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 25.2.2011 passed by the Learned Additional District and Sessions Judge, First Track, 1st Court, Haldia, Purba Medinipur in Criminal Revision No. 237 of 2010 arising out of the order dated 6.9.2010 passed by the Learned Executive Magistrate, Haldia in M.P. Case No. 304 of 2010. The relevant facts of the present case are, in a nutshell, as follows:

The petitioner herein as petitioner filed an application before the Learned Executive Magistrate, Haldia u/s 144(2) of the Code of Criminal Procedure. The said application was registered as M.P. Case No. 304 of 2010. After initiation of the said case, the Learned Executive Magistrate called for the reports from the BL & LRO and also from the Officer-in-Charge, Nandigram Police Station. After receiving the said reports, the Learned Executive Magistrate heard both sides and being satisfied with the contention of the petitioner, the Learned Executive Magistrate drew up proceedings u/s 144(2) of the Code of Criminal Procedure on 6.9.2010 and issued

notice accordingly.

2. Being aggrieved by the said order in the matter of drawing up proceeding u/s 144 of the Code of Criminal Procedure, the Opposite Party of the said case namely Subehndu Dikshit preferred the revisional application which was registered as Criminal Revision No. 237 of 2010. Subsequently, on 25.2.2011 the said revisional application was allowed on contest and the order of the Learned Executive Magistrate passed in the said M.P. Case was set aside.

3. Being aggrieved by and dissatisfied with the said order dated 25.2.2011, the petitioner herein has preferred this application.

4. It is submitted on behalf of the petitioner that the learned Revisional Court has failed to appreciate the facts and circumstances and the materials on record in its proper perspective and approached the matter from a wrong angle and this has resulted in failure of justice. It is submitted by the learned Counsel for the petitioner that the reports of the BL & LRO and the Officer-in-charge Nandigram Police Station disclosed that there was apprehension of breach of peace and accordingly the Learned Executive Magistrate after hearing both sides and after considering the said two reports drew up proceedings and as such there was no illegality or impropriety or any material irregularity in the said order of the Learned Executive Magistrate.

5. The Learned Counsel for the State and also Opposite Parties No. 1, 2, 3, 4, 5 and 7 have submitted that there is nothing wrong in the judgment and order dated 25.2.2011 passed by the Learned Additional District and Sessions Judge, First Track, 1st Court, Haldia, Purba Medinipur as the report of the BL & LRO discloses that the dispute between the parties is purely civil in nature because both the parties are claiming that they are the owners of the land in question. It is further submitted by the Learned Counsel that in spite of the said report that the dispute between the parties based on landed properties, the Learned Executive Magistrate drew up proceeding u/s 144(2) of the Code of Criminal Procedure without converting the proceeding under the provision of Section 145 of the Code of Criminal Procedure.

6. After taking into consideration all relevant facts and circumstances and materials on record and giving due regard to the submission made by the learned counsel for the parties, I think that this court is required to ascertain whether the impugned order suffers from any illegality or impropriety or material irregularity.

7. Now on careful perusal of the impugned Judgment dated 25.2.2011 with reference to the report of the BL & LRO it appears that the learned revisional Court has rightly observed that parties are the co-sharers in respect of the land in question and both the parties are claiming that they are the owners of the said land and the dispute between the parties is over the landed properties. The learned revisional Court has also rightly observed about the illegality in the order of the learned Executive Magistrate. On perusal of the said impugned order of the Learned

Executive Magistrate it appears that the learned Magistrate signed the impugned order dated 6.9.2010 on 15.9.2010.

8. Considering all such facts and circumstances I am of the opinion that the impugned order dated 25.2.2011 does not suffer from any inherent illegality or impropriety or any material irregularity and thus does not justify any interference by this Court. Moreover, since the impugned order of the Learned Executive Magistrate was passed as far back as on 6.9.2010, it has practically lost its legal force.

Be that as it may, the instant application fails.

9. The CRR No. 1322 of 2011 is dismissed and in the nature and background of the case without costs.

10. The impugned order dated 25.2.2011 passed by the Additional District and Sessions Judge, First Track, 1st Court, Haldia, Purba Medinipur in Criminal Revision No. 237 of 2010 is hereby affirmed.

11. Let a copy of this judgment be sent to the learned trial court for information and necessary action. Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, subject to compliance with all necessary formalities.