

(1995) 06 CAL CK 0004**Calcutta High Court****Case No:** C.O. 8318 (W) /95

P.C. Bhattacharya

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 19, 1995**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 144

Citation: (1996) CriLJ 41**Hon'ble Judges:** Samaresh Banerjea, J**Bench:** Single Bench**Advocate:** Arun Prakash Chatterjee and Ratna Bhattacharjee, for the Appellant; S. Ghosh Dastidar, Arunava Ghosh and Ranajit Talukdar, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

Samaresh Banerjea, J.

In the instant Writ application, the Writ petitioner has prayed for issue of a Writ in the nature of Mandamus directing the Police authorities to act in accordance with law and to give effect to or implement the order of the Executive Magistrate and to protect the petitioner's premises at CB 96, Salt Lake from encroachment and trespass and to cause the Respondent No. 5 to leave the petitioner's premises thus restoring status-quo ante. It has been further prayed for issue of a Writ in the nature of Mandamus directing the Police authorities to give effect to the order of the Executive Magistrate and to render all legal protection to the petitioner ensuring his personal safety and protection to his life, liberty and limbs.

2. It is the case of the petitioner that the Respondent No. 5 is his daughter-in-law (son's wife) and she has allegedly trespassed in his house and the Respondent No. 5 along with Respondent No. 6 to 12 and creating serious disturbance in the matter of enjoyment of property by the Writ petition. It is alleged that sometime after the

marriage with his son, the Respondent No. 5 tried to control the family of her in-laws and tried to take control of the premises. She threatened her husband that she would commit suicide if anybody raised objection to her way of life. She threatened her mother-in-law with a very loud voice and in a rude manner, used filthy language against her and in this way the happiness of the family was lost and in May, 1994, the wife of the petitioner committed suicide by hanging to get rid of such inhuman mental cruelties inflicted by the Respondent No. 5. The Respondent No. 5 allegedly threatened her husband and the petitioner to transfer the ownership of the property to her name. On 25-12-94, the brother and mother of the Respondent No. 5 came to the house of the petitioner and threatened him to transfer the ownership in favour of Respondent No. 5. A divorce suit has been filed by the son of the petitioner against the Respondent No. 5 before the Family Court which is pending.

3. On 10-2-95, the Respondent No. 5 and her associates threatened the petitioner with dire consequences and on 14-2-95, the husband of the Respondent No. 5 was assaulted by her.

4. All these matters were reported to the Police Station. On such alleged facts the petitioner moved the Court of the learned Executive Magistrate, Barrackpore, whereupon by an order dated 10-4-95, learned Magistrate directed the Officer-in-Charge, North Bidhannagar Police Station to report and to see that possession of the petitioner is not disturbed by the Respondent No. 5. Similar petition was moved by the petitioner u/s 107 of the Criminal Procedure Code and the learned Magistrate passed an order directing the Officer-in-Charge, North Bidhannagar Police Station to render legal protection to the petitioner.

5. It is alleged by the petitioner that inspite of such order, no assistance has been given by the Police either to maintain breach of peace or to protect the life and property of the petitioner. It is further alleged in the petition that the petitioner now-a-days does not stay at his House. On 6-5-95, a number of unknown persons being a mob led by Mahila Samiti and accompanied by the Respondent No. 5 went to the house of the petitioner and broke open the gate and went inside. On 7-5-95, when the petitioner went to his house he found that the gate has been locked. After a long wait, he was allowed to get in where he found the members of the Mahila Samity. It is alleged that all those persons compelled the petitioner to sign a formal agreement, the contents of which were not known to the petitioner, which he informed the Police over phone and a G. D. Entry was made on that date.

6. Mr. A.P. Chatterjee, learned Advocate for the petitioner submitted that the petitioner's life and property thus being in danger, the Police authorities are legally bound to give protection to him which is not being done.

7. Mr. Ghosh, appearing for the Respondent No. 5 on the other hand, seriously disputes the allegations made in the petition including the allegation that because

of the Respondent No. 5 her mother-in-law committed suicide. It is alleged that it is the Writ petitioner who used to beat his wife for which she committed suicide.

8. Mr. Ghosh has also raised legal points contending, inter alia, that the order of the learned Magistrate itself being bad ex facie the question of enforcement of the same does not arise. That apart from the nature of dispute it clearly indicates that the dispute relates to property and it is not for the Writ Court to go into such questions.

9. Learned Advocate appearing for the State Respondents has produced before this Court the Police report which has been submitted before the Court of the learned Executive Magistrate.

10. After considering the respective submissions of the parties and considering the Writ application, I am of the view that no interference is called for by the Writ Court in the facts and circumstances of this case.

11. It will appear from the impugned order of the learned Magistrate, enforcement of which is asked for in the instant Writ petition that the learned Magistrate without arriving at a satisfaction that there is apprehension of breach of peace has directed the Officer-in-Charge to see that the possession of the petitioner should not be disturbed by the Respondent No. 5. This sort of an order by the learned Magistrate in a proceeding u/s 144 of the Criminal Procedure Code has been very much deprecated by this Hon'ble Court in a number of decisions. It has been held in the case of Dayamay Bhattacharya Vs. Surya Kanta Sur and Others, that where the Magistrate did not record any satisfaction that there was any breach of the peace which necessitated initiating a proceeding u/s 144 of the Criminal Procedure Code so as to empower him to issue directions in accordance therewith but or) the contrary he called for a report from Police obviously with the purpose of ascertaining whether there was any apprehension of the breach of peace or not as alleged in the application, the order of Magistrate issuing directions to the opposite party was without jurisdiction and therefore the Writ petition for enforcing compliance of those directions would not be maintainable.

12. The facts in the instant case are similar, inasmuch as, the learned Magistrate without even coming to a satisfaction that there was any breach of peace, the learned Magistrate directed the Police to see that the possession of the petitioner is not disturbed by the Respondent No. 5.

13. Similar view has been expressed by the Supreme Court in the case of Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, where the Supreme Court held that in case of dispute of a private nature, the Writ Court is not a proper forum to decide such questions. In the case of Bistu Pada Khara v. State of West Bengal reported in 1995(1) CLJ 297, similar view has been expressed by SATYA BRATA SINHA, J. of this Court.

14. Accordingly, the question of enforcement of the order of the learned Magistrate does not and cannot arise in the instant Writ proceedings.

15. As to the other prayers of the petitioner as to protection of his life and property and the allegation to the effect that inspite of the order of the learned Magistrate, the Police is not taking steps, it does not appear from the petition that any such allegation has been made to the Police authorities. It is stated only in the petition that the allegation of obtaining his signature on an agreement by force was reported to the Police which was entered as a G.D. Entry, but if such allegation is true the petitioner certainly has his remedy both under the Criminal Procedure Code as well as by way of filing a civil suit and it is not possible for the Writ Court to go into such questions.

16. It is pertinent to note that the Police has submitted a report before the learned Magistrate, a copy of which has been produced before this Court whereupon, it appears that no illegalities have been committed by the Respondent Nos. 5 and 6 to 11. It has also been stated that the Respondent No. 5 did not forcibly enter into the premises but after coming from Dhanbad her access was obstructed at the instance of the petitioner but ultimately at the request of the neighbours, the Durwan permitted her to enter where she is now living. Whether the Respondent No. 5 who is admittedly the daughter-in-law of the petitioner has got a right to remain in the said home again is a question which cannot be decided by this Court. Such a dispute in my view is a private dispute and cannot be decided by the Writ Court.

17. Mr. Chatterjee, of course, submitted that the report of the Police which is now produced before the Court is not correct and is a tailored report. Whether such report is correct or not, it is not for this Court to decide and the Writ petitioner will be at liberty to take such point before the Learned Magistrate.

18. It is also significant to note that the petitioner after himself pleading in the petition that he does not stay in the house in question, have made allegation against the Respondent Nos. 5 to 12 about breaking open the lock, committing house trespass and has affirmed the said paragraph as true to his knowledge, although he was not present then.

19. For the reasons as aforesaid, I am of the view that no interference is called for and the Writ application is dismissed in limine.

20. Certified Xerox copy of this order, if applied for, be granted as expeditiously as possible.