

(1994) 04 CAL CK 0022

Calcutta High Court

Case No: Criminal Rev. No. 2005 of 1993

Debandra Nath Majhi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: April 29, 1994

Acts Referred:

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

Citation: 99 CWN 252

Hon'ble Judges: Nripendra Kumar Bhattacharya, J

Bench: Single Bench

Advocate: Sadananda Ganguli, Manik Bhaumik and Amitabha Dasgupta, for the Appellant; Biswaranjan Bhakat, for the Respondent

Judgement

Nripendra Kumar Bhattacharyya, J.

By this revisional application under Sections 401 and 482 of the Code of Criminal Procedure the petitioner has challenged the order dated 6-9-93 passed in M.C. Case No. 203 of 1993 by the Sub-divisional Magistrate, Jhargram, upon an application u/s 144 of the Code of Criminal Procedure made by the son of the petitioner (herein) before that Court alleging that there was apprehension of breach of peace but. as there is no mention in the report either of the Block Land and Land Reforms Officer and the Officer-in charge of the Navagram Police Station that by whom such breach of the peace may be caused, the learned Magistrate did not initiate a proceeding u/s 144 of the Code of Criminal Procedure but came to a positive finding, independent of the land and gave direction as follows:

legal steps be given to the O.P. members. Being aggrieved by the said order the petitioner has moved this petition in revision.

In short, the fact of the case is that the petitioner herein is the owner of the land in question and the opposite parties nos. 2 to 10 are alleged to be the bargadars in respect of the said land. Though the petitioner cultivated a portion of the said land,

the opposite parties nos. 2 to 10 are interfering with the possession and cultivation of the petitioner regarding the said land and for that there is an apprehension of the breach of the peace. On that allegation the petitioner's son made an application before the Sub-divisional Magistrate, Jhargram, u/s 144 of the Code of Criminal Procedure and the learned Magistrate directed the Block Land and Land Reforms Officer and the officer-in-charge of the Navagram Police Station to enquire and report. The said authorities after making an enquiry submitted their reports before the Sub-divisional Magistrate and the Sub-divisional Magistrate on the basis of the said report came to a finding that there was apprehension of the breach of the peace. As the reports were silent on the point by whom such breach of the peace may be caused he did not draw up any proceeding u/s 144 of the Criminal Procedure Code but came to an independent finding that the opposite parties are in possession of the land and gave direction as above.

2. Mr. Sadananda Ganguli with Mr. Manik Bhaumik. learned Advocates for the petitioner, took objection about the finding of the learned Sub-divisional Magistrate that the opposite parties are in possession and they are the recorded bargadars and that legal help be given to opposite parties members.

3. Mr. Biswaranjan Bhakat. learned Advocate, filed his Vakalatnama on behalf of the opposite parties nos. 2, 3, 4, 5, 8 and 9. It appears from the said Vakalatnama that opposite party no. 4 Dumka Hembram Soren and one Ram Chandra Soren opposite party no. 8 put their L.T.I though they are not the parties to the proceeding before this Court but their L.T.I, appear in the Vakalatnama. It has been explained by Mr. Bhakat that these are not the names of the parties but actually the names of the persons through whose pen the names have been written. In such circumstances, the Vakalatnama filed by Mr. Bhakat cannot be accepted. However, liberty is given to Mr. Bhakat to file a fresh power and he undertakes to file the same on behalf of the opposite parties nos. 2 to 10 within a week from this date.

4. Mr. Bhakat submitted that though it is not within the scope of Section 144 of the Criminal Procedure Code to come to an independent finding that some persons are the bargadars or they are in possession of the land in question, the learned Magistrate has the power to do so. He failed to satisfy under which provision of law such finding can be made.

5. With patience and anxiety, I have heard the submissions of the learned Advocates for the respective parties, perused the records and have taken into consideration the position of law and all the relevant aspects of the matter. The Scope u/s 144 of the Criminal Procedure Code is whether there is any apprehension of the breach of the peace. It is not the scope of Section 144 of the Code of Criminal Procedure that such apprehension of the breach of the peace is caused by whom. If the learned Magistrate finds on the basis of the police report or otherwise would be that there is apprehension of the breach of peace, a proceeding u/s 144 of the Code of Criminal Procedure should be drawn up and if the learned Magistrate is satisfied from the

report that there is no apprehension of the breach of the peace, then no proceeding u/s 144 should be drawn up. In the instant case, the learned Magistrate has come to a curious finding that there is apprehension of the of peace but as there is no mention by whom such apprehension has been caused in the report so submitted by the Block Land and Land Reforms Officer or by the Officer-in-charge of Navagram Police Station the learned Magistrate did not draw up proceeding u/s 144 of the Code of Criminal Procedure but came to an independent finding that the opposite parties nos. 2 to 10 are recorded bargadars and they cultivated the land and are in actual possession of the same. On such a finding he directed that legal help be given to the opposite parties. What is meant by such direction is not understandable. When the learned Magistrate did not draw up any proceeding u/s 144 of the Code of Criminal Procedure, such finding and/or order, as aforesaid, is without and beyond jurisdiction of the learned Magistrate. In that view of the matter. I am of the opinion that the impugned order cannot be sustained in law and it is accordingly set aside. The learned Magistrate is directed to pass an appropriate order according to law. The revisional application is thus allowed.

Let a copy of this order be sent down to the Court of the learned Subdivisional Judicial Magistrate, Jhargram, expeditiously.

Let xerox copies of this order be made available to the learned Advocates on record for both parties on their usual undertakings and upon compliance with necessary formalities.