

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 7051 of 2021

IN THE MATTER OF :

An Application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Abul Kalam

...2nd Party-Petitioner

Versus

Md. Abul Kashem and others

...Opposite Parties

Mr. Sayed Ahmed Raza with

Mr. Amran Hossain, Advocates

...For the 2nd Party-Petitioner

Mr. Ozi Ullah with

Mr. Mohammad Ruhul Quddus Patwary,

Advocates

...For the 1st Party-Opposite Party

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Judgment on: 29.04.2024

Md. Riaz Uddin Khan, J:

Upon an application filed under section 561A of the Code of Criminal Procedure the opposite parties were asked to show cause as to why the impugned judgment and order dated 13.01.2021 passed by the learned Sessions Judge, Lakshmipur in Criminal Revision No. 90 of 2019 under section

439A read with section 435 of the Code of Criminal Procedure allowing the criminal revision by reversing the order dated 11.07.2019 passed by the Additional District Magistrate, Lakshmipur in Miscellaneous Case No. 800 of 2015 dismissing the case should not be quashed and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.

At the time of issuance of Rule the parties were directed to maintain status-quo in respect of the possession and position of the disputed land.

Succinct facts for disposal of this Rule are that the opposite party as 1st party filed a complainant case alleging inter alia that the 1st party has been possessing the land by way of inheritance for 20 years by way of partition through compromise. The schedule land was low land which was developed by the 1st party by filling earth. Then after getting permission from the Pourashava the 1st party made 4 semi pacca shops on the schedule land which had been rented to the witnesses no. 03-06. Recently the 2nd parties have been trying to take possession of the land forcibly by claiming fake ownership. On the date of occurrence the 2nd parties along with 7/8 unknown armed persons entered into the schedule land and tried to dispossess his tenants but the witnesses no. 03-06 raised an outcry and in the mean time the 1st party knowing the matter

went to the place of occurrence and with the help of the witnesses prevented them. On their hue and cry the local people came forward and protected the 1st party and the witnesses from the hands of the 2nd parties otherwise the 2nd parties would kill them. The 2nd parties failing to take possession leaved the place of occurrence threatening that they would come again for taking the possession of the land and if anybody tries to deter, then they would kill them. On such facts apprehending breach of peace the 1st party filed the instant complaint petition under section 144/145 of the Code of Criminal Procedure. The case was registered as Misc. Case No. 800 of 2015.

After receiving the complaint the Additional District Magistrate was pleased to call for a report from the Union Assistant Land Officer, Lakshmipur. On inquiry the Union Assistant Land Officer, Lakshmipur submitted a report before the Additional District Magistrate on 06.12.2015 stating that the 2nd party dispossessed the 1st party from a portion of disputed property after receipt of the notice from the court.

In the mean time, the 1st party filed an application under section 188 of the Penal Code before the learned Magistrate who directed the Officer-in-Charge, Lakshmipur Sadar police station to inquire into the matter by his order dated 18.11.2015. The Officer-in-Charge submitted

his report on 06.01.2016 stating similar finding that of Union Assistant Land Officer. Thereafter the learned Magistrate by his order dated 11.02.2016 appointed the Officer-in-charge, Lakshmipur Sadar police station as receiver of disputed land and also issued notice upon the 2nd party petitioner to show cause and accordingly the 2nd party petitioner submitted a reply of the show cause. In such facts and circumstances the Additional District Magistrate, Lakshmipur after considering all the aspect was pleased to dismiss the complaint by his order dated 05.05.2016.

Against the said order dated 05.05.2016 passed by the Additional District Magistrate, Lakshmipur the 1st party opposite party no. 01 preferred Criminal Revision No. 104 of 2016 under sections 435, 436 and 439A of the Code of Criminal Procedure before the Sessions Judge, Lakshmipur who after hearing both the parties was pleased to allow the revision and send back the case for remand by his judgment and order dated 30.03.2017 on the finding that the learned Magistrate committed illegality in dismissing the complaint without taking evidence by examining the witnesses.

After receipt of the case record the Additional District Magistrate, Lakshmipur drew up the proceeding under section 145 of the Code of Criminal Procedure on 11.09.2017 and issued notice upon the parties including the witnesses.

In the proceedings 1st party examined 04(four) witnesses and 2nd party examined 03(three) witnesses to prove their respective case. After considering the evidence on record and position of law the learned Additional District Magistrate was pleased to withdraw the proceedings and order of appointment of receiver by his order dated 11.07.2019.

Being dissatisfied with the order dated 11.07.2019 passed by the Additional District Magistrate, Lakshmipur the 1st party opposite party no. 01 preferred Criminal Revision No. 90 of 2019 under section 439A read with 435 of the Code of Criminal Procedure before the Sessions Judge, Lakshmipur. After hearing both the parties the Sessions Judge, Lakshmipur was pleased to allow the Criminal Revision by his judgment and order dated 13.01.2021 by setting aside the order dated 11.07.2019 passed by the Additional District Magistrate, Lakshmipur.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 13.01.2021 passed by the Sessions Judge, Lakshmipur the 2nd party preferred the instant application under section 561A of the Code of Criminal Procedure before this Court and obtained the Rule and interim order as stated at the very outset.

Mr. Sayed Ahmed Raza along with Mr. Amran Hossain the learned Advocate appearing for the 2nd party-petitioner submits that admittedly the 1st

party-opposite party no.1 was dispossessed beyond 60 days of the drawing up of the proceeding under section 145 of the Code of Criminal Procedure and in that view of the matter the order passed by the Sessions Judge is wrong as the proceeding itself was not maintainable. In support of his submission he referred the case of Abul Kashem Vs. Md. Mofizuddin reported in 6 MLR (AD) 237.

On the other hand Mr. Ozi Ullah along with Mohammad Ruhul Quddus Patwary the learned Advocate appearing for the 1st party-opposite party no.1 submits that the 1st party was dispossessed after initiating the proceeding hence the order passed by the learned Magistrate was wrong and the learned Sessions Judge rightly passed the judgment and order declaring that the 1st party has possession over the suit land and rightly restrained the 2nd party from entering into the suit land and as such no interference is warranted by this Court.

We have heard the submissions of the learned Advocates for both the parties, perused the application, supplementary affidavit along with the annexures including depositions. We have gone through the impugned judgment and order passed by the learned Sessions Judge as well as the order passed by the learned Additional District Magistrate.

It appears from the order of the Magistrate that he appointed the Officer-in-Charge of the

local police station as receiver of the disputed property by his order dated 11.02.2016 and thereafter drew up proceeding under section 145 of the Cr.PC on 11.09.2017. It appears from both reports submitted by the Union Assistant Land Officer dated 06.12.2015 and officer-in-charge dated 06.01.2016 that after receipt of the notice from the court the 2nd party dispossessed the 1st party from a portion of the disputed property though there is no mentioned of any specific date. It is an admitted position that the 1st party was dispossessed as he filed an application under section 188 of the Penal Code for taking action against the 2nd party for violating court's order. In any view of the matter, it is an admitted fact that the 1st party was dispossessed not within two months before the order of drawing up proceedings under section 145 of the Cr.PC. According to sub-section 4 of section 145 of the Code of Criminal Procedure there is no scope of restoring possession beyond the period of 60 days from the date of dispossession and drawing up the proceeding. In such position of the case the learned Magistrate rightly refused to declare the 1st party to be entitled to possession of the disputed property as the Magistrate decided that none of the parties were or should under the first proviso to sub-section 4 of section 145 of the Cr.PC be treated as being in exclusive possession of the disputed property on the

findings that both parties being full brothers inherited the property from their father and there was no proof of partition by metes and bounds. From the order passed by the Magistrate it appears that he was not satisfied from the facts/evidence on record that there exists any apprehension or likelihood of serious breach of peace over the dispute between the full brothers. The order passed by the Magistrate is not an appealable order.

The Sessions Judge as revisional court has no jurisdiction to declare that 1st party has possession over the suit land and 2nd parties are restrained to enter into the suit property. Legally, at best the Sessions Judge could direct the Magistrate to pass order in light of his observation made in his judgment. The learned Sessions judge in his impugned judgment nowhere observed that from the evidence on record the dispute between the parties likely to cause a breach of peace exists concerning the disputed land, which is the pre-condition in drawing up a proceeding under section 145 of the Cr.PC. The dispute over the property is between the brothers which they inherited from their father and in absence of partition the proceeding under section 145 of Cr.PC is not the proper legal recourse to decide the possession.

In the facts and circumstances of the case and the position of law as discussed above, we

are of the view that the judgment and order passed by the Sessions Judge is not tenable in the eye of law which is liable to be set aside/quashed.

In such view of the matter, we find substance in this Rule.

Resultantly the Rule is made **absolute**.

The impugned judgment and order dated 13.01.2021 passed by the Sessions Judge, Lakshmipur in Criminal Revision No. 90 of 2019 under section 439A read with section 435 of the Code of Criminal Procedure allowing the criminal revision by reversing the order dated 11.07.2019 passed by the Additional District Magistrate, Lakshmipur in Miscellaneous Case No. 800 of 2015 is hereby quashed. The order dated 11.07.2019 passed by the Additional District Magistrate, Lakshmipur in Miscellaneous Case No. 800 of 2015 is hereby affirmed. The interim order passed by this Court at the time of issuance of Rule stands vacated.

Communicate the judgment and order at once.

Ashish Ranjan Das, J:

I agree.

Ziaul Karim
Bench Officer