

Case No. Criminal Motion. 151/2022  
**CNR No. WBMDOE-0018042022**

Order No. 03

Dated 05.11.2022

This is an application u/s 397/399 of Cr.P.C where petitioner challenged the order dated **12.09.2022** passed by Ld. E.M., Jangipur, in Case No. **1252/M/2022** and also prayed for setting aside the said order.

Certified copies of impugned order and the petition which is filed u/s 144(2) Cr.P.C have been filed.

One stay petition has been filed. Copy of the stay petition has been served upon the Ld. P.P in charge who is representing the OP No-2 the State of West Bengal. Over the stay matter heard Ld. Advocates of both sides and considered submission.

Ld. P.P in charge in course of hearing pointed out that the order passed by Ld. E.M., Jangipur is not an illegal order. He rightly directed BL & LRO, Raghunathganj-I to submit report.

On the other hand, Ld. Advocate for petitioners submitted that the prayer of opposite party No.1 in case No.1252/M/2022 is purely of civil nature and the civil court of competent jurisdiction can only adjudicate such prayer. Further according to Ld. Advocate for petitioner no report from BL & LRO, Raghunathganj-I has been obtained but Ld. E.M, Jangipur was pleased to direct I.C, Raghunathganj PS to enquire into the matter and submit report as well as to look into the matter regarding construction. So, finding no alternative petitioner has filed this criminal motion challenging the order of Ld. E.M, Jangipur.

Heard both sides. Perused the xerox copy of purchase deed of Tajkera Bibi wife of the petitioner and filed by the petitioner in this case.

Considered.

It appears from the purchase deed in favour of the petitioner that 2.293 decimals out of 20 decimals in plot No.1401/1489 was purchased by the petitioner's wife. Petition u/s144(2) CrPC reflects that petitioner intend to raise construction over portion of suit plot for which one Md. Rafikul Islam initiated a proceeding u/s 144(2) CrPC against petitioner. So, report of BL & LRO, Raghunathganj-I is essential to adjudicate the case No.1252/M/2022. Without filing a suit of civil nature before the appropriate forum opposite party intended to obtain a restrain order in disguise of direction upon IC, Raghunathganj PS to look into the matter regarding construction under Section 144 (2) CrPC. No report from concerned BL & LRO has been obtained yet.

In such circumstances, a direction in exparte form upon IC, Raghunathganj PS to look into the matter regarding construction without assigning any emergency and without obtaining any report from concerned BL & LRO is opposed to the provision of Section 144(1) & 144(2) CrPC. So, let the operation of the impugned order be stayed only to the extent of direction upon IC, Raghunathganj PS “ to look into the matter regarding construction” up to next date. Petitioner is directed to file postal receipt of the notice otherwise stay order is to be recalled.

Call for LCR. Issue Notice upon OP No.1.

Petitioner is directed to file requisites immediately.

**Fix 05.12.2022 for Receiving LCR, SR of notice, appearance of the opposite party No.1 and also for passing for further order.**

Let a copy of this order be sent to Ld. E.M., Jangipur for information and taking necessary steps in the matter of sending the LCR of Case No. **1252/M/2022**.

Dictated and corrected by me

Sd/-

Addl. Dist. & Sess. Judge,  
2<sup>nd</sup> Fast Track Court, Jangipur, Msd.

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2<sup>nd</sup> Fast Track Court, Jangipur, Msd.