

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

1ST COURT, SERAMPORE

**Present: Sri Manoj Kumar Rai,
Additional Sessions Judge,
1st Court, Serampore, Hooghly.**

Criminal Motion No. 065 of 2023

Prabhu Dayal Barwaria and Another

.....Petitioners

Versus

Pijush Chowdhury and Another

.....Opposite Parties

Order No. 01 dated 04.04.2023

This is an application under section 397/399 of the Criminal Procedure Code, filed by the petitioners being aggrieved by and dissatisfied with the order dated 27.03.2023, passed by the Ld. A.C.J.M., Serampore, Hooghly, in connection with G.R. Case No. 810/2020. The application has been filed within the period of limitation. Register the same as Criminal Motion.

The instant motion is taken up for hearing on the point of admission. Perused the impugned order and considered. Let the motion be admitted. Issue notice upon the opposite party No. 1 in both ways and through court only upon the State, fixing **21.06.2023** for S.R., A.D. and appearance. Call for L.C.R.

Ld. Lawyer for the petitioners moves his application for stay.

Heard the Ld. Lawyer for the petitioners. Perused the application under sections 397/399 of Cr.P.C., application for stay and xerox copies of documents submitted at the time of hearing. Considered.

Ld. Lawyer for the petitioners submits that by impugned order, Ld. A.C.J.M., Serampore has been pleased to allow the prayer of defacto complainant for further investigation under section 173(8) of Cr.P.C. and directed that the case be further investigated by other I.O. excepting the previous I.O. The Ld. Lawyer for the petitioners submits that it has been alleged by O.P. No. 1 who happens to be maternal uncle of Mita Das that his sister Mina Das Roy and complainant himself were the owners of the property in question and in the year 1980 the complainant built a house at his own expense in the name of his sister and the complainant. Mita Das, the daughter of his sister Mina Das Roy forged signature of her mother and executed power of attorney in favour of petitioner No. 2. He also relied upon an order of the Hon'ble High Court at Calcutta in which the Hon'ble High Court, while granting bail to Mita Das, observed that the original owner left behind her surviving not only the Mita Das but other four children who have not come forward and challenged the transaction in relation to the property. The Hon'ble Court arrived at a conclusion that the maternal uncle does not come within the purview of heirs under section 15 of Hindu Succession Act. He argued that on the prayer of defacto complainant, who is brother of deceased, the Ld. A.C.J.M. has been pleased to make an order for further investigation. He submits that a final report as mistake of fact has been submitted by I.O. in this case and the right of the defacto complainant has been curtailed by the Civil Court of competent jurisdiction in Misc. Appeal No.

09/2021. According to him, the impugned order is not sustainable in law and as such, the same should be stayed.

On careful perusal of document submitted on behalf of the petitioners it is apparent that the petitioners have a prima facie case which requires scrutiny of the court in the instant revision. If the impugned order is not stayed, the petitioners shall be prejudiced.

Hence, it is ordered that the instant application for stay filed on behalf of the petitioners is hereby allowed. Let there be an interim stay of operation of order 27.03.2023 and all further proceedings of G.R. 810/2020 pending before the Ld. A.C.J.M., Serampore till 21.06.2023.

Dictated & corrected by me.

Sd/- (Sri M.K. Rai)

A.S.J.

Sd/- (Sri M.K. Rai)

Additional Sessions Judge,
1st Court, Serampore