

(1998) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 353 of 1997

Amrit Lal Kumawat and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 145, 146, 146(1), 451
Penal Code, 1860 (IPC) — Section 147, 448

Citation : (1998) CriLJ 3032 : (1998) 3 RCR(Criminal) 841 : (1998) 2 RLW 975 : (1998) 3 WLC 319 : (1998) 1 WLN 566

Hon'ble Judges : Amaresh Kumar Singh, J

Bench : Single Bench

Advocate : Sandeep Mehta, for the Appellant; Ashok Upadhyay, Public Prosecutor for Respondent No. 1 and A.K. Acharya, for the Respondent

Final Decision : Allowed

Judgement

Amaresh Kumar Singh, J

1. Heard learned counsel for the petitioners, the learned Public Prosecutor and learned counsel for non-petitioner No. 2.

2. In this petition, the question which arises for determination is, whether the learned Judicial Magistrate No. 2 (North), Udaipur was competent to pass orders u/s 451 of the Criminal Procedure Code in respect of immovable property which was in dispute between the,, parties. The facts so far as they are necessary for the disposal of this petition may briefly be stated as below : On 22-1-1997, Prakash Vaishnav submitted a report in writing at the Police Station Dhanmandi, Udaipur in which he stated that his maternal grand-father Shri Raman Lal was in possession of a residential house situated in Nal waya Chowk, Dhanmandi, Udaipur. Shri Raman Lal Acharya expired on 21-1-1997. It was further stated in the report that when the complainant and other relatives were attending to the funeral rites Shri Dev Kishan Kumawat, Shri Hari Singh Kumawat, Shri Amrit Lal Kumawat, Shri Ghanshyam Kumawat, Prakash, Dev Kishan Panwala, Ramesh

Patawa and several other persons went to the house of Shri Raman Lal Acharya and placed their own locks on the door which had already been locked (after the death of Shri Ramaji Lal). It was further alleged that when the above named persons were asked not to place their locks, they appeared to be ready for a quarrel and they threatened the complainant and his relatives. On the basis of the report submitted by Prakash Vaishnav, the Police registered a case u/s 147 and 448 of the Indian Penal Code.

3. During the investigation of the case, the investigating officer went to the disputed property and found that on the first floor of the temple of Murli Manoharji there was a room. Just below that room, there was a room on the ground floor. The two rooms were connected by stairs. There were two locks placed on the door of the room situated on the first floor. On enquiry, he came to know that one of the two locks had been placed by members of Kumawat community and the other lock had been placed by the Pujari. The lock which was reported to be placed by the Kumawat community was opened by Shri Leeladhar and the lock which was reported to have been placed by the Pujari was opened by Shri Prakash, in the presence of the investigating officer. Inside the room household items were found to be lying. After inspecting the site, the investigating officer prepared the site plan. Both the locks were again placed on the door of the room. But, in place of returning the keys to Prakash Chandra and Leeladhar, the keys of the locks were seized by the investigating officer.

4. After the seizure of the keys (which fact has been mentioned in the site plan and inspection note dated 22-1-1997), the petitioners Amrit Lal and others as well as non-petitioner No. 2 moved applications before the learned Addl. Civil Judge (Junior Division)-cum-Judicial Magistrate No. 2 (North), Udaipur u/s 451 of the Criminal Procedure Code praying that possession of the room should be given to them.

5. The learned Addl. Civil Judge (Junior Division)-cum-Judicial Magistrate No. 2 (North), Udaipur rejected the application filed by the petitioners and allowed the application filed by non-petitioner No. 2. The operative portion of the order passed by the learned Judl. Magistrate reads as under:

In the result, the application Cr. Misc. Appl. No. 51 /97 filed by Sarva Shri Amritlal, De vkishan, Harisingh, Ghanshyam, Prakash and Ramesh is rejected and the application Cr. Misc. App. No. 66/97 filed by Motilal s/o Nandlal R/o Nalwaya Chowk is allowed and it is ordered that the immovable properly seized by the Dhanmandi Police during investigation of the crime registered under FIR No. 9/97 under Sections 147 and 448 of the I.P.C. be made over to the applicant Motilal on supurdginama until the disposal of the case on furnishing by him a recognizance of Rs. one lakh and a surity in the same amount undertaking that he shall surrender and make over the possession of the said property to this Court whenever called upon to do so by the Court.

6. The petitioners filed revision petition No. 25/97 Amritlal V; State of Rajasthan

against the order passed by the Judicial Magistrate. The revision petition was transferred to Special Judge, S.C./S.T. Cases, Udaipur who was ex officio Addl. District and Sessions Judge. After hearing the parties, the learned Judge dismissed the revision petition vide order dated 22-4-1997.

7. Feeling aggrieved by the orders passed by the Courts below, the petitioners have filed this miscellaneous petition u/s 482 of the Criminal Procedure Code.

8. The first question that arises for decision in the case is whether the learned Judicial Magistrate was competent in law to pass the order, u/s 451 of the Criminal Procedure Code in respect of the immovable property which he presumed to have been seized by the investigating officer during the investigation.

9. Section 451 of the Criminal Procedure Code reads as under :

451. Order for custody and disposal of prop erty pending trial in certain cases. - When any property is produced before any Criminal Court during any inquiry or trial, the Court may make jsuch order as it thinks fit for the proper custody jof such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. - For the purposes of this section, "property" includes -

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

Immovable property is admittedly not covered by Clause (a) of the explanation given below Section 451 of the Criminal Procedure Code. The question is whether the expression "any property" in Clause (b) of explanation given in Section 451 of the Criminal Procedure Code includes the immovable property.

10. Since Section 451 applies when any property is "produced before any criminal Court", it may be said that this section is applicable to those cases where the property is capable of being produced before the Court and since immovable property like lands, houses and buildings are not capable of being produced before any criminal Cdurt, they are not covered by Section 451 of the Criminal Procedure Code.

11. So far as the right of the police to take property in its custody is concerned, Section 102 of the Criminal Procedure Code empowers the police officer to seize certain properties. Sub-section (1) of Section 102 provides that any spplice officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Sub-section (2) of Section 102 provides that such

police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer. Sub-section (3) of Section 102 provides that every police officer acting under Sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such as it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

12. On a careful reading of Section 102 of the Criminal Procedure Code; it is difficult to hold that this section empowers a police officer to seize immovable property like plots of land, residential houses, mountains, rivers streets or similar properties. There are several reasons for arriving at the aforesaid conclusion. The first is that no useful purpose is going to be served by the seizure of the immovable property of the above kind so far as the object of investigation is concerned; Therefore, it cannot be inferred that for the purpose of facilitating investigation, inquiry or trial seizure of immovable property of above kind is permissible. So far as the title to immovable property is concerned it is the competent civil Court or revenue Court which is empowered by law to adjudicate the disputed questions relating to title. The investigation by the police has nothing to do with the disputes relating to title to any immovable property. So far as the possession of immovable property is concerned, in case of dispute, the Executive Magistrate may take appropriate action under Sections 145 and 146 of the Criminal Procedure Code; if the conditions laid down for exercise of power u/s 146(1) of the Criminal Procedure Code are satisfied. The Executive Magistrate may attach the disputed property subject to the provisions of that Section. Seizure by the police of immovable properties, even if there is a dispute about the possession thereof, cannot be inferred in view of the provisions of Sections 145 and 146 of the Criminal Procedure Code. The rule that if there are special provisions in the statute to deal with a certain matter then the general provisions do not apply to that matter, is applicable in the case. Therefore, even if there are disputes about immovable property and attachment of the property is necessary for preventing the breach, of peace it is the Executive Magistrate who is specially empowered under Sections 145 and 146 of the Criminal Procedure Code to pass suitable orders for attachment. The power of police to seize immovable property, in cases in which there is a dispute about the possession cannot, therefore, be inferred from provisions of Section 102 of the Criminal Procedure Code.

13. Immovable property cannot be stolen because it is incapable of being removed from the possession of any person. Even in those cases where a person who was in possession of immovable property has been deprived of his possession by a trespasser and it is considered necessary to restore possession of the property to the complainant, it is Section 456 of the Criminal Procedure Code which gives a limited jurisdiction to the Court in which the trial is conducted. Sub-section (1) of Section 456 of the Criminal Procedure Code provides that when a person is convicted of an offence attended by criminal force

or show of force or by criminal intimidation and if appears to the Court that, by such force, or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any person who may be in possession of the property. The proviso given in Sub-section (1) of Section 456 provides that no such order shall be made by the Court more than one month after the date of the conviction. Sub-section (2) of Section 456 provides that where the Court trying the offence has not made an order under Sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be; and, Sub-section (3) of Section 456 provides that where an order has been made under Sub-section (1), the provisions of Section 454 shall apply in relation thereto as they apply in relation to an order u/s 453. The cases in which a person has been deprived of the possession of his immovable property by use of force or show of force or by intimidation are covered by Section 456 of the Criminal Procedure Code and, in such cases, the jurisdiction to restore possessions is vested in the Court which tried and convicted the accused or in the Court of appeal or revision and the aforesaid jurisdiction can be exercised only in the event of the conviction of the offender. There is no mention in Section 456 of the Criminal Procedure Code about the seizure of the property u/s 102 or about the passing of order by Court u/s 451 of the Criminal Procedure Code. It is, therefore, proper to infer that the legislature does not contemplate that the property in respect of which the trial Court, appellate Court, or revisional Court may pass an order of restoration of property u/s 456 of the Criminal Procedure Code, may be seized by the police during investigation or may be dealt with by the Magistrate u/s 451 of the Criminal Procedure Code. If the legislature had intended that such property should be seized by the police officer there was nothing to prevent the legislature from indicating in Section 102 of the Criminal Procedure Code that immovable property can also be seized by the police officer. If the legislature had intended that a Magistrate would be competent u/s 451 to pass orders regarding the immovable property the legislature would not have required the production of the property in the Court because immovable property is incapable of being produced in the Court and, in any case, in Section 456 of the Criminal Procedure Code the legislature must have referred to the seizure of the property by the police u/s 102 and the orders passed by the legislature u/s 451 of the Criminal Procedure Code.

14. For reasons mentioned above, I am of the opinion that immovable property like lands, houses, mountains, rivers, roads and streets and similar properties cannot be seized by a police officer u/s 102 of the Criminal Procedure Code nor the Magistrate can pass any order u/s 451, Cr.P.C. in respect of such properties. If there is a dispute regarding the title to any immovable property it is the competent civil Court which alone can exercise jurisdiction by adjudicating disputed question of title. If a person has been deprived of the possession of immovable property, generally it is the civil Court which alone has the jurisdiction

to restore the possession to the person entitled thereto. An exception to the general rule is laid down in Section 456 of the Criminal Procedure Code which provides that when a person is convicted of an offence attended; by criminal force or show of force or by criminal intimidation and it appears to the Court that sucree force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that the possession of the same be restored to that person. The power u/s 156 may be exercised by the trial Court, appellate Court, or the revisional Court. The power conferred by Section 456 of the Criminal Procedure Code cannot be exercised during the period the investigation, inquiry, of trial is in progress. This power can be exercised after the conclusion of the trial and only in those cases in which the Court convicts the accused and the offence alleged is an offence attended by criminal force, show of force, or criminal intimidation in dispossession and dispossession by criminal force, show of force or intimidation is proved beyond reasonable doubt. If there are disputes about the possession over any immovable property and there is an apprehension of breach of peace, the proceedings may be instituted in the Court of the Executive Magistrate u/s 145 of the Criminal Procedure Code and order of attachment may be passed by the Executive Magistrate under Sub-section (1) of Section 146 of the Criminal Procedure Code if the conditions laid down in that section are satisfied. The police investigating the case does not appear to be entitled to seize the immovable properties of the abovementioned description in exercise of the powers u/s 102 of the Criminal Procedure Code nor the Magistrate appears to be empowered u/s 451 of the Criminal Procedure Code to make any order regarding the immovable properties of the above-mentioned description. In the instant case, the order dated 11-3-97 passed by the learned Addl. Civil Judge (Junior Division)-cum-Judl. Magistrate No. 2 (North), Udaipur must be said to be without jurisdiction and, on this count, it deserves to be quashed and set aside.

15. It may also be pointed out that in the instant case the immovable property which was in dispute (the room situated on the first floor of the temple which was formally in possession of Ramanlal) was not seized by the police officer at any time. No seizure memo is available on the file of the lower Court. The site-inspection note however contains a recital that after the inspection of the site the keys of the room were seized by the investigating officer. It is, therefore, obvious that in the instant case no immovable property was seized by the police or any other authority. Only 2 keys had been seized by the investigating officer. The keys were movable properties and, therefore, they could have been seized by the police officer u/s 102 of the Criminal Procedure Code and the learned Judicial Magistrate was competent to pass orders regarding the keys only.

16." In view of this fact, it was neither necessary nor it was within the jurisdiction of the learned Judicial Magistrate to have passed any order regarding the immovable property in dispute.

17. For the reasons mentioned above, the petition is allowed; The order dated

11-3-97 passed by the Addli Civil Judge (Junior Division) & Judl. Magistrate: No. 2 (North), Udaipur in CriminalCasei No. 51 /97 and the order dated 22-4-97 passed by the Addl. Sessions Judge in Criminal Revision Petition No. 25/97 are hereby quashed and set aside.

18. "If there is any dispute regarding the title and possession, the parties should file appropriate proceedings in the competent civil Court. In case, any dispute regarding the possession of the immovable property causes apprehension of breach of peace the competent Court rmay take action according to law under Sections 145 or 146 of the Criminal Procedure Code.

19. The petition is disposed of accordingly. A copy of this order be sent along with the record of the lower Court to the concerned Magistrate.