

(2015) 06 SHI CK 0049
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 278 of 2014

Joginder Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 451, 453, 454, 456
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 448

Citation : (2015) 06 SHI CK 0049

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : George, for the Appellant; Vivek Singh Attri, Dy. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Sureshwar Thakur, J.

1. Respondent No. 2 herein/complainant/applicant claimed exclusive possession to the disputed premises wherein he was operating his business of a "Manyari", on the score of his deceased father Jagdish Chand during his life time having delivered its possession to him. The deceased father of respondent No. 2 herein, and of the accused Joginder Singh/petitioner herein, had constructed a house at Ghawandal Chowk, Shri Naina Devi Ji, District Bilaspur comprising of six rooms on the ground floor and two rooms in the upper storey. The rooms in the aforesaid premises are disclosed in the application filed under Sections 451 and 457 of the Cr.P.C. to be in possession of his brother Joginder Singh/petitioner herein. However, one room in the upper storey is averred in the aforesaid application to be in the possession of the complainant/respondent No. 2 herein. The business of a "Manyari" is averred to be operated by respondent No. 2 from the said room in the upper storey since the last 20 to 25 years by him even during the life time of his deceased father Jagdish Chand. However, on 16.01.2009, when respondent No. 2 herein/applicant before the learned trial

Court had gone to Hissar, he on his returning to his native place had on 18.01.2009 proceeded to at about 7.00 p.m. open the shutter of his shop, then his brother Joginder Singh, his wife Smt. Usha, his sons Arun and Rohit and his daughter Suman allegedly attacked him with lathis and also abused him and threatened to do away with his life. A report qua the incident was lodged with the police post concerned which resulted in the recording of FIR No. 14/09 of 19.01.2009 at Police Post Shri Naina Devi Ji under Police Station Kot Kehloor, District Bilaspur, H.P. The alleged offences constituted in the FIR arising from the incriminatory/penal acts of the accused were recorded therein to be falling under Sections 147, 148, 323, 448, 504, 506 read with Section 149, IPC. In consequence to the lodging of the FIR, the police sealed the disputed shop as accused Joginder Singh had installed his two locks upon the lock of the respondent No. 2/complainant. The police had taken into possession the keys of the locks put on the shop by respondent No. 2 herein as well as by accused/petitioner herein from their respective possession. The premises from where respondent No. 2 operated his business of "Manyari" having come to be sealed by the police constrained the respondent No. 2, to institute an application under Sections 451 and 457 of the Code of Criminal Procedure, 1973 before the learned Chief Judicial Magistrate, Bilaspur claiming the relief therein that the disputed premises sealed by the police be unsealed so as to facilitate him to operate his business of "Manyari". The learned Chief Judicial Magistrate, Bilaspur on considering the material on record comprised, in the no objection furnished by the learned APP to the application being allowed besides, the statement of the accused Joginder Singh revealing therein that in consonance with a compromise effected before the Gram Panchayat concerned inter se him and the complainant/respondent No. 2 herein, the disputed shop/premises was to remain allotted or consequentially in possession of respondent No. 2 herein only for 11 months, whereafter it is to be vacated, was constrained to allow the application preferred by the applicant/respondent No. 2 herein. A direction was also rendered by the learned Chief Judicial Magistrate to the Station House Officer of the police station concerned to unseal the sealed premises and handover its temporary possession to the applicant/respondent No. 2 herein till the conclusion of the trial of the case arising from the lodging of the FIR No. 14 of 2009. The handing over of the temporary possession of the disputed shop/premises by the learned Chief Judicial Magistrate to the applicant/respondent No. 2 herein was also subject to the condition of the latter furnishing a supurdari bond in the sum of Rs. 1,00,000/- along with one surety in the like amount.

2. The decision rendered by the learned Chief Judicial Magistrate, Bilaspur was assailed in revision by the petitioner herein before the learned Sessions Judge, Bilaspur. However, the learned Sessions Judge, Bilaspur affirmed the conclusions and findings recorded by the learned Chief Judicial Magistrate in his order impugned before the learned Sessions Judge, Bilaspur.

3. The accused/petitioner herein stands aggrieved by the findings and conclusions concurrently arrived at and recorded against him by the learned

Chief Judicial Magistrate, Bilaspur and by the learned Sessions Judge, Bilaspur, on an application instituted under Sections 451 and 457 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Bilaspur by the respondent No. 2 herein.

4. Both, the petitioner herein/accused and respondent No. 2 herein/complainant/applicant are brothers. The property qua which the dispute arose inter se the petitioner herein and the respondent No. 2 herein is "immovable property". The incident which preceded the lodging/recording of the FIR in the police station/police post concerned as allegedly attributed to the accused/petitioner herein is, of his alongwith his family members on 18.01.2009 at about 7.00 p.m., when the respondent No. 2/applicant/complainant proceeded to open the shutter of the shop wherefrom he was operating his business of a "Manyari", having attacked the latter with lathis and abused him as also threatened to do away with his life, besides his having installed his locks upon the locks installed by the complainant/respondent No. 2 herein on the shutter of the disputed shop/premises, so as to preclude him or prevent him to operate his business of a "Manyari" therefrom. The disputed premises were sealed and the keys of the locks installed on the shutter by the petitioner herein and respondent No. 2 herein were taken into possession by the police.

5. The gravamen of the core issue which besets this Court is whether the exercise of jurisdiction by the learned Chief Judicial Magistrate, Bilaspur in ordering the delivery of temporary possession of the shop in dispute to respondent No. 2 herein by the SHO of the police station concerned, besides the orders of the learned Sessions Judge, Bilaspur in affirmation to the orders rendered by the former, withstand the test of theirs being free from any jurisdictional error. The appropriate provisions of law in the Code of Criminal Procedure, 1973 whereunder the respondent No. 2 had cast his application for obtaining relief from the learned Chief Judicial Magistrate, Bilaspur and which relief was afforded in his favour stand engrafted in Sections 451 and 457, which provisions stand extracted hereinafter:

"451. Order for custody and disposal of property pending trial in certain cases.-

When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of 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 purpose 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.

Section 457. Procedure by police upon seizure of property.--(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detail it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

6. The factum, whether the orders rendered by both the learned Courts below are free from any jurisdictional error would depend upon an interpretation of the provisions of Sections 451 and 457 of the Cr.P.C. whereunder the respondent No. 2 had cast his application before the learned Chief Judicial Magistrate, Bilaspur. A plain and literal reading of the provisions of Section 451, Cr.P.C. expressly pronounces the open fact that the Criminal Court of competent jurisdiction, is empowered to, pending the conclusion of an inquiry and trial, on its being satisfied on a portrayal by the evidence recorded by it, that the property as produced before it, is subject to speedy and natural decay, render an order for its sale and disposal. However, the property qua which an order for its sale or disposal on it being precedingly concluded on a discernment of the evidence as adduced before it, that pending the conclusion of the inquiry or trial, such property would speedily or naturally decay, obviously necessitates an inference that the contemplated order for disposal or sale of property, is to be obviously construable to be relatable to only movable property. An impetus to the inference aforesaid of Section 451, Cr.P.C. envisaging besides, enunciating that pending any inquiry or trial the Criminal Court of competent jurisdiction may render an order for sale or disposal of only such property which is open to speedy and natural decay, hence, qua only movable property, is that the condition of speedy and natural decay can only be begotten by moveable property and not by immovable property. Even otherwise the opening phraseology used in the provisions of Section 451 of the Cr.P.C., is both, lucid and explicit in communicating the fact that the Criminal Court of competent jurisdiction when proceeds to, during the pendency of an inquiry or trial, render an order for sale and disposal of such property on its receiving evidence qua the preeminent factum probandum of its being subject to speedy and natural decay, then such property necessarily is enjoined to be "produced" before the Criminal Court of competent jurisdiction. In other words, the contemplation and enunciation in Section 451 of the Cr.P.C., when read harmoniously is of the Criminal Court of

competent jurisdiction being vested with the authority or power to render an order qua the sale or disposal of property, on its concluding, on receiving evidence that it is subject to speedy and natural decay, besides on the property qua which such orders are rendered, having come to be produced before the said Court. Moreover, the production of the property in Court qua which the contemplated orders in Section 451 of the Cr.P.C., are renderable by the Criminal Court of competent jurisdiction, is an enjoined mandatory or indispensable condition for foisting tenability or validity to them. As a corollary, no property other than movable property can be construed to be liable for production in a Criminal Court of competent jurisdiction, to hence empower the Criminal Court of Competent jurisdiction, to render an order qua its sale or disposal during the pendency of an inquiry or trial before it. In other words, only moveable property as a natural concomitant can be concluded to be the subject matter or the dominant corpus qua which the Criminal Court of competent jurisdiction can acquire both power and authority, to render an order qua its sale or disposal within the contemplation of Section 451 of the Cr.P.C.

7. Furthermore, for reiteration the power of sale or disposal of property contemplated in Section 451 of the Cr.P.C., besides can be concluded to encompass only moveable property and that too when concluded on an evaluation of evidence as adduced before the Criminal Court of competent jurisdiction qua its being subject to speedy and natural decay. Naturally, immovable property which is neither subject to speedy or natural decay nor liable to be produced nor producible before the Court, obviously then hence no order for its disposal or sale during the pendency of an inquiry or trial can be rendered by the Criminal Court of competent jurisdiction. The Explanation (b) to Section 451 of the Cr.P.C., manifesting the fact that the property as defined in the substantive provisions of Section 451 of the Cr.P.C., is also construable to be any property regarding/qua which an offence appears to have been committed or which appears to have been used for the commission of any offence, is also in amplification of the substantive provisions of Section 451 of the Cr.P.C., wherein the sine qua non ingredients, to be mandatorily borne by "property", qua which an order for its disposal or of sale are jurisdictionally renderable by the Criminal Court of competent jurisdiction during the pendency of any inquiry or trial before it, after the recording of evidence, are of its being hence concluded to be subject to speedy and natural decay besides, its being producible before the Court. Moreover, the orders envisaged or contemplated to be renderable in the substantive provisions of Section 451 of the Cr.P.C., are with a manifest salutary object to preclude or prevent the proven speedy and natural decay of property. The contemplation and intent of explanation (b) to Section 451 of the Cr.P.C. cannot extend nor enlarge nor substitute the substantive provisions of Section 451, Cr.P.C., so as to render open an inference, that even when the accused/petitioner herein has allegedly committed offences comprised in his act of installing his locks upon the locks installed by the complainant/respondent No. 2 on the disputed premises warranting the sealing of the said premises at the

instance of the police, yet when obviously the disputed premises is an immovable property, hence, un-producible in Court nor liable for production in Court, that hence during the pendency of an inquiry or trial against the petitioner herein/ accused qua the commission of offences constituted under Sections 147, 148, 323, 504, 506 read with Section 149 of the IPC, besides when it is neither subject to natural or speedy decay, it would befittingly empower the Criminal Court of competent jurisdiction to during the pendency of the inquiry or trial render an order for its sale or disposal, as facilitating or lending boost to the aforesaid inference on the anvil of explanation (b) to Section 451 of Cr.P.C. would be erosive of the intent and contemplation of the substantive provisions of Section 451 of the Cr.P.C. Explanation (b) to Section 451 of the Cr.P.C., cannot be read in a manner so as to denude the salutary purpose of the substantive provisions of Section 451 of the Cr.P.C., with a loud communication therein of the intent of the legislature, of its being available for invocation only when the sine qua non conditions pronounced therein standing substantiation inasmuch, as the property qua which, during the pendency of an inquiry or trial, the Criminal Court of competent jurisdiction may render an order qua its sale or disposal, having come to be produced in Court, as also, a firm conclusion on an discernment of evidence adduced before it preceding the rendition of an order qua its sale or disposal, that it is subject to speedy and natural decay. Necessarily then when the offences allegedly committed by the accused is upon and qua immovable property yet even then when it neither subject to speedy or natural decay nor was produced besides, un-producible at the time of rendition of the impugned orders by both the learned Courts below, the enshrined substantive provisions of Section 451 of the Cr.P.C., as enjoined to be substantiated for its invocation would hence be rendered meaningless as well as redundant, in case yet, hence, as untenably done, its temporary possession is ordered to be delivered to respondent No. 2 herein. The substantive provisions of Section 451 of the Cr.P.C., when pronouncing upon the conditions which are to be satisfied, before the Criminal Court of competent jurisdiction proceeds to render an order in terms thereof, cannot but be allowed to remain intact or uneroded. Any effort or concert while relying upon Explanation (b) in Section 451, Cr.P.C., to erode them would beget an anomalous scenario which was never within contemplation of the legislature. Therefore, no succor is to be drawn from explanation (b) to Section 451 of the Cr.P.C., to extend or enlarge the purpose and intent of the substantive provisions of Section 451 of the Cr.P.C., so as to empower the Criminal Court of competent jurisdiction to take within its ambit and scope immoveable property for hence empowering it to render an order qua its disposal during the pendency of the inquiry or trial. Besides, to permit such enlargement or extension to the meaning of explanation (b) in Section 451 of the Cr.P.C., would manifestly be militative of, besides would beget conflict with the substantive provisions of Section 451, Cr.P.C. with the mandatorily enjoined proven conditions enunciated therein of the property qua which the contemplated orders under Section 451 of the Cr.P.C., are renderable by the Criminal Court of competent jurisdiction on its having come to be produced before it, besides satisfaction having come to be on

available evidence that it is subject to speedy and natural decay. In sequel the orders rendered by both the learned Courts below are infirm especially when they rendered qua immovable property qua which the rendition of the impugned orders are outside the contemplation of Section 451 of the Cr.P.C.

8. Furthermore, amplifying vigour to the inference aforesaid is lent by the factum of special provisions existing or standing in Section 456 of the Cr.P.C., wherein a power is vested in the Court concerned to, on convicting an offender/accused on conclusion of trial qua offences constituted under Section 506, IPC when on whose proven commission sequels an unlawful dispossession of the complainant/victim from immovable property, hence, render an order for restoration of its possession to the complainant from whom its forcible possession under intimidation was taken by the accused/convict. The provisions of Section 456 of the Cr.P.C. are extracted hereinafter:--

"456. Power to restore possession of immovable property.--(1) When a person is convicted to an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force of 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 other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Whether the Court trying the offence has not made an order under sub-section (1), the Court to 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.

(3) 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 under Section 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit."

With the existence of special provisions in Section 456 of the Cr.P.C., whose provisions could well have been, on an application preferred before it by the complainant resorted to, by the Criminal Court of competent jurisdiction on convicting the petitioner/accused for his having committed offences punishable under Section 506, IPC, for affording the relief qua its possession being delivered to him. Obviously when only on proven commission of offence constituted under Section 506, IPC at the instance of the accused, that hence a warrantable conclusion could stand drawn that the possession of the disputed premises (immovable property) was taken by the convict/accused under threat or

intimidation, from the complainant/respondent No. 2 necessarily then the apt statutory provisions engrafted in Section 456 Cr.P.C., hence, vested jurisdiction in the Criminal Court of competent jurisdiction to order for restoration of possession of immovable property to the victim/complainant. Therefore, with apt and special provisions to afford relief to the respondent No. 2/complainant qua immovable property standing pronounced in Section 456 Cr.P.C., resort to the provisions of Sections 451 and 457 of the Cr.P.C., when the contemplation and mandate engrafted therein dis-empowers, for the reasons aforestated, the Criminal Court of competent jurisdiction, to during the pendency of trial and inquiry order the handing over of temporary possession of the disputed premises/shop i.e. immovable property to the respondent complainant, was grossly improper as well as inapt. Moreover, when the power to restore possession to respondent No. 2/complainant, for reiteration are enjoined to be exercisable by the Criminal Court of competent jurisdiction only on its recording an order of conviction against the accused for his having committed offences constituted in the FIR lodged against him and his family members under Sections 147, 148, 323, 448, 504, 506 read with Section 149 of the IPC, the invocation of the inapt provisions of Sections 451 and 457 of the Cr.P.C., by both the learned Courts below in favour of the complainant/respondent No. 2 herein is obviously grossly untenable besides, in transgression to the mandate of the special apt provisions engrafted in Section 456 of the Cr.P.C. Even otherwise if some interim directions were warrantable qua the disputed premises/shop/immovable property in that event the respondent No. 2/complainant could well have initiated proceedings under Section 145 of the Cr.P.C., before the Executive Magistrate concerned. The scope, width and amplitude of the provisions of Section 145 of the Cr.P.C. especially with Sub-section (2) thereof taking within its ambit buildings, as such, encompassing the disputed immovable property, as a natural concomitant then besides with Section 145 of the Cr.P.C., being the relevant, apt and germane provisions for galvanization at the instance of the complainant/respondent No. 2, to claim interim relief, his act of having untenably cast an application Under Section 451 and 457 of the Cr.P.C. is to be dis-approved. Moreover, the interim directions rendered on his misconceived application under Section 451 and 457 of the Cr.P.C., by both the learned Courts below too stands to be discountenanced. For reiteration, the appropriate application which was institutable at the instance of respondent No. 2/complainant was one under the provisions of Section 456 of the Cr.P.C., and that too only on an order of conviction having come to be recorded by the Criminal Court of competent jurisdiction against the petitioner herein, besides for interim relief under Section 145 of the Cr.P.C., and that too before the Executive Magistrate concerned who rather was empowered hence to render any interim order qua the person entitled to temporary possession of the disputed property.

9. For the foregoing reasons, the instant petition is allowed and the impugned orders rendered by the learned Courts below are quashed and set aside. The Station House Officer of the Police Station concerned is directed to re-seal the

disputed shop/premises. However, on conclusion of trial pending before the learned Chief Judicial Magistrate, he shall, in case records findings of conviction against the petitioner herein/accused, render an appropriate order qua the disputed premises under Section 456 of the Cr.P.C., besides it will be open to the applicant/complainant/respondent No. 2 herein to move the Executive Magistrate concerned to obtain interim temporary possession of the disputed premises with an appropriate application laid before him under Section 145 of the Cr.P.C. All pending applications, if any, also stand disposed of.