
(2014) 11 BOM CK 0034

In the Bombay High Court

Case No : Criminal Writ Petition Nos. 1323 and 1324 of 2014

Manisha Santosh Chhajed

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 451, 456, 456(1)

Citation : (2015) 1 BomCR(Cri) 194

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : A.P. Bhandari, Advocate for the Appellant; V.S. Badakh, Advocate and S.B. Pulkundwar, Additional Public Prosecutor, Advocate for the Respondent

Judgement

T.V. Nalawade, J.—The petitions are filed under the provisions of Articles 226 and 227 of the Constitution of India to challenge the order made by the Judicial Magistrate, First Class, Ahmednagar on applications filed under section 451 of the Code of Criminal Procedure by the petitioner and respondent No.2. The Judicial Magistrate First Class has directed to hand over the possession of two shop premises during pendency of the trial to present respondent No.2 -Jitendra Shantilal Chhajed on execution of bond of rupees three lakhs. Some conditions are imposed on him to prevent him from alienating the property or for creating interests of any third party in the property. Both the sides are heard.

2. The petitioner, Smt. Manisha Chhajed, gave report to Kotwali Police Station, Ahmednagar on 24-5-2011. She contended that the two shop premises owned by the Agricultural Produce Market Committee (APMC), Ahmednagar were given to her husband by the APMC and after the death of her husband, she is entitled to occupy the two shop premises as a successor of her husband. It is contended that her name is also entered in the record of the APMC in that regard. It is her case that she was in possession of the shop premises and she had put her locks on the shop premises. It is her case that she married with a person from Pune

and so she shifted to Pune on 9-7-2010. It is her case that when she visited the shop premises on 24-5-2011, she found that the locks put on the premises were not there and the respondent No.2-Jitendra Shantilal Chhajed had illegally taken possession of the shop premises behind her back and he was doing business of grain merchant in the shops. Respondent No.2 -Jitendra is brother of her previous husband Santosh and she has contended that, the respondent No.2-Jitendra said that she has no concern with the shop premises. Crime at CR No.192/2011 came to be registered and during investigation of the crime police seized the two shop premises and put their locks on the shop premises. At the relevant time respondent No.2-Jitendra was found occupying the two shop premises.

3. Criminal Misc. Application No.672/2011 was filed by petitioner Smt. Manisha and Criminal Misc. Application No.940/2011 was filed by respondent No.2 Jitendra for interim possession of the property. After hearing both the sides the orders under challenge came to be made. The Judicial Magistrate has considered relevant provisions of the Code of Criminal Procedure (for short "the Code") from Chapter XXXIV and has held that the shop premises was given to Shantilal, father of Jitendra and Santosh, and so it cannot be said that Jitendra had no concern with the property or that he is not entitled to get the possession when he was found in possession on the date of seizure.

4. Learned counsel for the petitioner submitted that the property seized in the crime is immovable property and such order cannot be made under section 451 of the Code. He submitted that the possession can be given of such property only under section 456 of the Code and that stage comes only after the conclusion of the trial. Learned counsel for respondent No.2-Jitendra supported the order made by the learned Judicial Magistrate, First Class.

5. This Court has gone through all the provisions of Chapter XXXIV of the Code to ascertain the scheme regarding disposal of property. Section 451 of the Code reads as under :-

"451. When any property is produced before any Criminal Court during any 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 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."

6. In Explanation portion of the said section it is made clear that the property

mentioned in the section includes property of any kind. On this point there is one case of this Court reported as 2000 Bom.C.R. (Cri) 600 (Panaji Bench) (between Anup R. Kantak and State). The proceeding was filed under section 457 of the Code and this Court held that the Magistrate gets the power to deal with such property from the moment it is seized irrespective of the fact whether the seizure was lawful or not. The property involved was shop premises. Though the proceeding was filed under section 457 of the Code, present proceeding cannot be distinguished for the present purpose from the procedure which is required to be followed under section 457 of the Code. Provision of Section 457 of the Code reads as under :-

"457 (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 detain 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."

7. If we compare the aforesaid two provisions, it can be said that for the purpose of use of the procedure given under section 457 of the Code there is not even the necessity of registration of any crime. Immediately after the seizure of the property by police officer, the police officer is expected to report the seizure to the Magistrate under the provisions of the Code. Even if the property is not produced before the Criminal Court during inquiry or trial, the Magistrate is empowered to make such order as he thinks fit respecting disposal of the property or the delivery of the property to the person entitling possession thereof. Procedure is given for disposal if the person who is entitled is not known. This section shows that even when crime is not registered the Magistrate gets such power and so it cannot be said that the Magistrate has no power under section 451 of the Code to make order of handing over possession of immovable property.

8. The learned counsel for the petitioner submitted that when immovable property is involved the provision of Section 456 of the Code only can be used. Relevant portion is section 456(1) with proviso and it runs as under :-

"456(1) 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, 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 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."

9. This provision shows that when some immovable property is involved in the matter, at the time of decision of the matter the Magistrate is to take decision as to who has been dispossessed of the immovable property and if it is proved that the person, accused, had illegally, forcibly taken the possession of the property, the Magistrate can make order of restoration of the possession in favour of the person who was dispossessed. The object behind this provision is different. Even in the present case the order made under section 451 of the Code is interim in nature and at the end the Magistrate can use the power given under section 456 of the Code. Thus, there is no force in the contention made by the learned counsel for the petitioner.

10. The learned counsel for the petitioner placed reliance on one case reported as *Amrit Lal Kumawat and Others Vs. State of Rajasthan and Another*, . The Rajasthan High Court has discussed the power of police of seizure of immovable property and some observations are made with regard to the use of the provisions of sections 144 and 145 of the Code. This Court is avoiding to discuss the reasoning given by the Rajasthan High Court in view of the aforesaid provisions and the decision given by this Court in the case of *Anup* (cited supra).

11. Both the sides have shown to this Court some record of civil litigation. The record of First Appeal No.132/2008 pending in this Court was also called by this Court. It appears that between the branches of Shantilal and his brother the suit was pending for relief of partition and it was filed by the branch of brother of Shantilal. Present property was also included as suit property. The defence was taken by the branch of Shantilal, which includes Santosh and Jitendra, that the two shops premises were taken from the APMC by Shantilal and it was not the property of the predecessor of Shantilal. The Civil Court accepted this contention and no relief like partition of this property was given in favour of the plaintiffs of Special Civil Suit No.97/2004 which was pending before the Civil Court, Senior Division, Ahmednagar. In view of this circumstance it cannot be said that Jitendra is not entitled to possession. Whether and how the petitioner is also entitled need not be discussed as that would be the matter for decision of Civil Court. The contentions made in the FIR and the police papers show that when the property was seized, present respondent No.2 was found in possession. This single circumstance and the entitlement of aforesaid nature are sufficient for the Criminal Court to direct to hand over possession to present respondent No.2. No fault can be found in the order made by the Criminal Court. There is no record whatsoever with the petitioner to show that she was actually using the premises.

12. In the result, both the petitions stand dismissed.