
(1992) 06 CAL CK 0031
In the Calcutta High Court
Case No : Criminal Revn. No. 2004 of 1991

Nandalal Rath

APPELLANT

Vs

State of West Bengal and Durgadas Dutta

RESPONDENT

Date of Decision : 18-06-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 156(3), 451, 456, 456(4)
Penal Code, 1860 (IPC) — Section 34, 380, 448

Citation : (1992) 2 CALLT 318

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Sekhar Kumar Basu and Prasun Kumar Dutta, for the Appellant; Tarun Banerjee and Nirbanesh Chatterjee for Opposite Party No. 2 and Krishna Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.—This revisional application u/s 482 Cr. P.C. is directed against the order No. 22 dated 7-9-91 passed by the learned Chief Metropolitan Magistrate, Calcutta in G.R. Case No. 1610 of 1991 under Sections 448/380/34 of the Indian Penal Code. The respondent No. 2, Durgadas Dutta who is the owner/proprietor of M/s. Aristocrat Electronics filed a petition of complaint against the present petitioner u/s 156(3) Cr. P.C. which was referred to the Police for investigation. The complainant claimed that he was, a tenant in respect of the Room No. G-4A of the premises of Kamalalay Centre at 156A, Lenin Sarani with effect from 2-5-90 although physical possession of the said room was given on 7-4-90 and he kept goods in the said room worth about Rs. 2 lakhs and also issued an Account Payee Cheque for Rs. 16,000/- being the rent for the months of September 1990 to April 1991 and also paid Rs. 50,000/- as advance adjustable against rent. The further Allegation of the complainant is that on 6-4-91 he demanded rent bills and for adjustment of the advance amount but the petitioner became adamant and asked the complainant to vacate forthwith. The complainant filed a petition u/s 144 Cr. P.C. before the Executive Magistrate

but on 12-4-91 when he went to open his shop in the morning he found the shutter-gate of the room open and also found that all the goods were removed by the accused persons and the accused No. 1, the present petitioner was found inside the room. The complainant filed another petition u/s 144(2) Cr. P.C. and also referred the matter to the Shop and Office Owners Association of the same premises. It appears that thereafter on 22nd April, 1991 the complainant filed the above mentioned complaint u/s 156(3) Cr. P.C. on the basis of which section H (DD) Case No. 225 dated 17-5-91 was registered giving rise to the connected G.R. Case No. 1610 of 1991 u/s 448/380/34 I.P.C. In course of the investigation of the said case the present petitioner was arrested by the police and was subsequently released on bail. On 7-6-91 the police, on the basis of a search warrant, searched the concerned shop room and prepared inventory list. It is the case of the petitioner that nothing incriminating was found, from the concerned shop room and the police prepared several seizure lists dated 3-6-91, 6-6-91 and 7.6.91 showing recovery of stolen articles from backside of the lift at the 2nd floor of the premises and from the residence of the petitioner. It appears that after search of the concerned shop room the police closed the room by putting their own pad-lock. By his impugned order dated the 7th September, 1991 the learned Chief Metropolitan Magistrate directed the investigating Officer to make over the key of the said room to the de facto complainant on bond with an undertaking to produce the same before the Court as and when required.

2. The contention of the petitioner is that by a "Consultancy Agreement" dated 30-4-90 he accommodated the complainant with a portion of the said room for a period of 11 months with effect from 2-5-90 and as per the terms and conditions of the said agreement the petitioner by his letter dated 15-12-90 served 3 months" prior notice upon the complainant asking him to deliver vacant and peaceful possession of the said room on or before the 2nd April, 1991 together with fittings and fixtures and pursuant to the said notice the complainant handed over peaceful and vacant possession of the said room to the petitioner in presence of witnesses on 6-4-91. It is also the allegation of the petitioner that after getting possession of the said room while the petitioner with the help of his men were removing on 7-4-91 the glow sign-board fixed on the wall of the said shop room by the complainant, the complainant and his men wanted to create disturbance and later in that evening they tried to break open the pad-lock of the shop room forcibly but was restrained by the darwan of the said premises and on the next day the complainant being accompanied by some unknown persons came and threatened the petitioner with dire consequences and the petitioner lodged a G.D. and filed an application u/s 144(2) Cr. P.C. The petitioner, on 10-4-91, also filed a Title Suit before the City Civil Court, Calcutta along with an application for injunction restraining the complainant from interfering with the petitioner's possession of the said shop room and the complainant also entered appearance in the said Suit as defendant and filed written objection against the application for injunction. The learned Chief Metropolitan Magistrate has recorded in his impugned order that the learned Advocate appearing on behalf of the

accused had admitted that in the petition it had not been disclosed how the accused could take possession of the said room when the facts stood that he had all along accepted rent for the said premises at the rate of Rs. 2,000/- per month from September 1990 to October 1991 by cheque. The learned Magistrate has further recorded that the acceptance of such rent by cheque was admitted and the bank's letter stating that all the cheques had been cleared and credited to the account of the accused was also shown to the learned Magistrate. The learned Magistrate further recorded that the learned Advocate appearing for the accused verbally submitted that the de facto complainant was merely a licensee and not a tenant and that the accused had taken possession of the said room before the incident. The learned Magistrate observed however that such contention had not been raised in the petition and that even a licensee could not be evicted from a room except according to law. The learned Magistrate as I have already noted directed the investigating Officer to make over the key of the room to the complainant on bond.

3. It has been submitted by Mr. Sekhar Kumar Basu on behalf of the petitioner that by directing the Investigating Officer to hand-over the key to the opposite party on bond the learned Magistrate has exercised a jurisdiction which did not vest in him inasmuch as by passing the impugned order the learned Magistrate has given temporary possession of the concerned room which is immovable property in favour of the opposite party. It has been further submitted that it is only u/s 456 Cr. P.C. that a Magistrate can direct restoration of immovable property to any person but such power can be exercised by the Magistrate only in certain specified circumstances when a person has been convicted of an offence attended by criminal force or show of force or by criminal intimidation. Since in the present case the trial has not yet been held, not to speak of conviction, the learned Magistrate, it has been argued, had no jurisdiction to pass the impugned order directing delivery of the key which was not a seized property. It has been further argued by Mr. Basu that even Section 456(4) provides that no order made under the said 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. The contention is that since a civil suit between the parties and a petition of temporary injunction in such civil suit in respect of the self-same property are pending before the civil court, the learned Magistrate had no jurisdiction to pass any order even regarding the temporary possession of the immovable property. While it is correct that Section 456 Cr. P.C. does not apply to a case where no order of conviction has yet been made, sub-section (4) thereof however does not debar a Magistrate from passing an order of restoration of possession of immovable property in a fit case simply because a civil suit may be pending, although the question whether any such order for restoration of possession should be made by a Magistrate during the pendency of a civil suit is a matter which depends upon the facts and circumstances of the particular case. All that sub-section (4) of Section 456 provides in effect is that any order for restoration of possession of an immovable property which a

Magistrate may pass in a particular case u/s 456 Cr. P.C. will not affect the claim of any person to such property which he can establish in a civil suit. In other words, such order of a Magistrate will not be a bar for a person to establish his right, title and interest, if any, in such property in a civil suit. The civil court in such a civil suit will decide the claim on merits without being influenced by or even without taking into consideration the order of the Magistrate passed u/s 456(4). Be that as it may, in the present case obviously the impugned order was not passed nor could have been passed u/s 456 Cr. P.C. which is not attracted at a preconviction stage of the criminal proceeding.

4. It however appears that on 6th September, 1991 an application was filed before the Learned Chief Metropolitan Magistrate by the present petitioner that as a civil suit was pending between the parties in respect of the same shop room the learned Magistrate should defer passing of any order in respect of the said shop room till the suit was disposed of. It is the contention of the petitioner that without taking that fact into consideration that a civil suit was pending between the parties the learned Magistrate has passed the impugned order, after he had fixed a date for hearing the petitioner's said application dated 6-9-91 but before that date and without considering the said application. It is true that the learned Magistrate did not take the question of pendency of the civil suit into consideration in passing the impugned order, but then the impugned order is an order of interim nature. u/s 451 Cr.P.C. such an order, it seems, can be passed by a Magistrate in a pending proceeding in respect of any property regarding which an offence appears to have been committed. It is true that the main part of Section 451 Cr.P.C. speaks of property produced before any criminal court, but the scope of application of the section stands extended by virtue of the Explanation (b) to the said section. The Explanation reads thus :-

"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".

In the context of the expression "when any property is produced before any Criminal Court" the clause (a) of the Explanation includes property or document which is produced before the Court or which is in its custody. Clause (b) of the Explanation however extends the scope of the application of the said section even to any property, not produced in Court but regarding which an offence has been committed or which has been used for the commission of any offence. If clause (b) of the Explanation is so interpreted as to keep the section confined only to property produced in Court or in the custody of court in that case the clause becomes totally redundant because clause (a) by itself is sufficient for the purpose. If any effective meaning is to be given to clause (b), then it must include property which has not been produced in court or which is not in the

custody of the court. A property regarding which an offence has been committed or which has been used in the commission of any offence, if produced in Court, automatically comes within the fold of clause (a) which includes property of any kind which is produced in Court. Therefore it is evident that clause (b) of the Explanation which has to be given an effective meaning extends the scope of application of the section even to any property which is not produced in Court or which is not in the custody of the Court but which answers the description given in clause (b). Consequently the section applies even to an immovable property regarding which an offence appears to have been committed. This view also receives support from the decision of the Rajasthan High Court in *Narbada v. Md. Hanif* 1982 Cr. LJ 2330.

5. However an order u/s 451 Cr. P.C. can be passed only "during any inquiry or trial". Section 2(g) provides that "inquiry" means every inquiry, other than a trial conducted under the Code by a Magistrate or Court. Section 2(h) provides that "investigation" includes all proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. Investigation is a stage anterior to inquiry or trial. In the present case the learned Magistrate passed the impugned order during the pendency of the investigation and not during the pendency of any inquiry or trial. Therefore it can not be said that the learned Magistrate passed the impugned order u/s 451.

6. But then the impugned order definitely falls within the ambit of Section 457(1) Cr. P.C. which runs thus :-

"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".

In this case the police seized the concerned room by putting lock and key after search during investigation and reported the fact to the Magistrate when no inquiry or trial was pending before him. This is a situation that gave jurisdiction to the learned Magistrate to pass the impugned order which is sustained by the provision of Section 457(1) Cr. P.C. In its plain meaning the word "property" as used in Section 457 includes both movable and immovable property. Where Section 456 authorises a Magistrate to pass order regarding possession of immovable property in certain circumstances at the conclusion of a trial or soon thereafter and where Section 451 authorises him to pass an interim order regarding custody of movable as well as immovable property during any inquiry or trial, there is no reason to attribute a truncated meaning to the word "property" as used in Section 457 so as to exclude immovable property from the scope of the said section. It is evident that Section 457 also applies to

immovable property.

7. It therefore cannot be said that the learned Magistrate has acted without jurisdiction in passing the impugned order by directing the key of the room to be delivered to the opposite party. At any rate I do not consider it to be a proper case for interfering with the impugned order at this stage. The revisional application is therefore liable to be dismissed. It is however made clear that nothing in the impugned order will affect the rights of either parties to establish their respective claims to the concerned room in the pending civil suit, and the Civil Court will decide the civil suit or for that matter the petition for temporary injunction according to law on the basis of the materials placed before it without being in any way influenced by the impugned order of the learned Magistrate and that nothing in the impugned order shall also influence the final decision of the learned Magistrate in the criminal proceeding pending before him, which shall be decided¹ and disposed of according to law on the basis of legal evidence as may be produced before him. It is further clarified that nothing in the present order of this Court shall be taken as an expression of any opinion on the respective rights and contentions of the parties in the pending criminal proceeding as well as in the civil suit. Subject to what is stated above this revisional application is dismissed.