
(1970) 09 RAJ CK 0003
In the Rajasthan High Court

The Mavli Co-operative Sahkari Samiti Mavli	APPELLANT
Vs	
Soram and Others	RESPONDENT

Date of Decision : 03-09-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435
Rajasthan Co-operative Societies Act, 1965 — Section 37(1), 37(2), 37(3)

Citation : (1971) CriLJ 759 : (1970) RLW 583

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Judgement

C.M. Lodha, J.—This is a reference by the Additional Sessions Judge, Udaipur recommending that the order of learned Sub-divisional Magistrate, Vallabhnagar dated 27th May 1968 be set aside and he may be directed to issue necessary warrant u/s 37 (1) of the Rajasthan Cooperative Societies Act, 1965.

2. It appears that Alarakh and Amarchand newly elected Chairman and Secretary of the Mavli Samyukta Sahkari Samiti Ltd., Mavli submitted an application on 22-2-1968 before the sub-divisional Magistrate, Vallabhnagar u/s 37 (1) of the Rajasthan Cooperative Societies Act, 1965 (which will hereinafter be called "the Act" praying for issue of a warrant against the non petitioners Soram and others u/s 37 (3) of the Act authorising any police officer not below the rank of a Sub-Inspector to enter and search the place where the records of the Samiti are kept and to seize such records and also to deliver the records so seized to the newly constituted Samiti. The learned Sub-divisional Magistrate summarily rejected this application on the ground that unless a report is received from the Assistant Registrar no order could be passed.

3. Dissatisfied with the order of the learned Sub-divisional Magistrate the petitioners filed a revision application on which this reference has been made by the Additional Sessions Judge. Udaipur.

4. The first question that arises for consideration is whether the order of the learned Magistrate is revisable by this Court u/s 435, Cr.PC In this connection it

is important to bear in mind that the Magistrate though appointed under the Criminal Procedure Code does not act as such Magistrate but a special power has been conferred upon him by a special Act namely the Co-operative Societies Act to issue a warrant u/s 37 (3) of the Act. This special Act does not itself constitute the Magistrate a Criminal Court. In exercising powers u/s 37(3) of the Act the Magistrate is not exercising judicial functions. This conclusion necessarily follows from the manner in which the power has to be exercised, namely, on receipt of an application under Sub-section (1) or Sub-section (2) the Magistrate may by a warrant authorise any police officer not below the rank of a Sub Inspector to enter and search any place where the records are kept and to seize the same, and the record so seized shall be handed over to the new committee, or the Administrator etc. as the case may be. There is no provision for hearing of the parties against whom relief is sought.

It is further clear that the function performed by a Magistrate u/s 37 (3) of the Act is not very similar in nature to the functions of a Criminal Court under any of the provisions of the Criminal Procedure Code. Remembering further that the object behind this provision is only securing the records to be handed over to the new committee or the Administrator of the Society, as the case may be, the reasonable conclusion in my judgment appears to be that the Magistrate is not discharging the functions of a Criminal Court in dealing with an application u/s 37(1) and/or (2) of the Act. Consequently. I hold that the action of the Magistrate is not that of a Criminal Court and cannot be revised u/s 435 of the Code of Criminal Procedure. I am further inclined to hold that while exercising powers conferred by Section 37(3) of the Act a Magistrate acts only as a persona designate under the powers conferred, by a special Act, and his order is not revisable u/s 435 Cr.PC

5. In this view of the matter the reference made by the learned Additional Sessions Judge, Udaipur cannot be accepted, and I hereby reject the same.