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**(1970) 09 RAJ CK 0011**

**In the Rajasthan High Court**

**Case No : Criminal Reference No. 127 of 1970**

The Mavli Co-operative Sebkari Samiti

APPELLANT

Vs

Soram and Others

RESPONDENT

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**Date of Decision : 03-09-1970**

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 435

Rajasthan Co-operative Societies Act, 1965 — Section 37(3)

**Citation : (1970) WLN 532**

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

**Bench : Single Bench**

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## **Judgement**

C.M. Lodha, J.—This is a reference by the Additional Sessions Judge, Udaipur recommending that the order of the learned Sub-Divisional Magistrate, Vallabhnagar dated 27.5.1968 be set aside and he may be directed to issue necessary warrant u/s 37 (i) of the Rajasthan Cooperative Societies Act, 1965

2. It appears that Alarakh arid Amarchand newly elected Chairman and Secretary of the Mavli Samyukta Sebkari Samiti Ltd., Mavli submitted an application on 22.2.1961 before the Sub-Divisional Magistrate, Vallabhnagar u/s 37 (i) of the Rajasthan Cooperative Societies Act. 1965 which will hereinafter be called the "Act" praying for issue of a warrant against the nonpetitioners 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 that Court u/s 436, Cr.P.C. 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 Cooperative 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 designata* under the powers conferred by a special Act, and his order is not revisable u/s 435. Cr.P.C.

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