

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 185 OF 2015

Mohd. Sadiq Mohd. Raza Shaikh @ Munna Applicant.

V/s.

The Senior Inspector of Police (Byculla
Police Station, Mumbai) & Others. ... Respondents.

Mr. R.Sathyanarayanan with Javed Allana, Advocate for the
Applicant.

Mr. Ajay Patil, APP for the State.

Mr. Y.E. Mooman i/by H.E. Mooman for Respondent No.2.

CORAM : M.L.TAHALIYANI,J.

DATE : 13th MARCH, 2015

P.C. :

1 Admit. Heard finally.

2 Heard learned Advocate Mr. Sathyanarayanan for
the Applicant, learned Advocate Mr. Y.E. Mooman for
Respondent No.2 and the learned additional public prosecutor
for the State.

3 Respondent No. 1 is Senior Inspector at Byculla
Police Station and Respondent No.3 is the State of
Maharashtra. There was a dispute in respect of Plot No. 21
which in fact belongs to the Bombay Port Trust (BPT). The

possession of the plot was claimed by the applicant (original respondent no.2 - Mohd. Sadiq Mohd Raza Shaikh @ Munna) on one hand and original respondent no.3 - Mr.Peer Mohd. Munsir Razak Khan on the other hand. It was in actual physical possession of the respondent no. 2 (original respondent no.1). The matter was reported by the Magistrate to the Police. Therefore, police were cited as 'Applicant' in the original proceedings before the Magistrate.

4 The Magistrate initiated proceedings under section 145 of the Criminal Procedure Code. During the pendency of the proceedings, the premises were sealed. The hearing of the proceedings went on for about 10 years. Bulk of evidence was recorded and the documents were produced. The learned Metropolitan Magistrate was satisfied that the dispute in respect of plot no. 21 was not likely to cause breach of peace and there never existed breach of peace on account of dispute over plot no. 21. The learned Magistrate, therefore, refused to pass any effective order and dropped the proceedings initiated under section 145 of the Criminal Procedure Code. The sealed premises were directed to be opened and were directed to be handed over to respondent no.2 herein, who was respondent no.1 in the original proceedings before the Metropolitan Magistrate. Original Respondent No.2 Mohd. Sadiq Mohd. Raza Shaikh carried the matter to the Sessions Court in criminal revision application no. 1398 of 2014. The Sessions

Court upheld the view expressed by the learned Metropolitan Magistrate and dismissed the criminal revision application. It is against this order of the learned Additional Sessions Judge, that the Applicant, who was original respondent no. 2 before the Metropolitan Magistrate, has moved this court by way of filing this criminal application.

5 I have gone through the orders of the Magistrate's Court and the Sessions Court. After having gone through the orders, it appears that there is a serious dispute with regard to the possession of plot no. 21. However, there is no material to show that there was any apprehension of breach of peace or a breach of peace ever existed. In view of that it is clear that the learned Metropolitan Magistrate did not have any powers to exercise jurisdiction under section 145 of the Criminal Procedure Code. Section 145 of Cr. P.C. is not meant for declaration of possession or ownership of the parties over the property. Section 145 comes under Chapter 10 of the Cr. P.C.. which deals with "Maintenance of Public Order and Tranquillity". So the basic purpose behind introduction of section 145 of the Cr.P.C. is that an Executive Magistrate or a Metropolitan Magistrate, as the case may be, shall be able to prevent breach of peace whenever there is a dispute with respect of a land or a landed property. The authority of learned Executive Magistrate or learned Metropolitan Magistrate, as the case may be, is very limited under section

145 of the Cr.P.C. as his powers are only to prevent breach of peace.

6 In these circumstances, in my view, this court in exercise its powers in writ jurisdiction will not interfere with the findings given by the learned Metropolitan Magistrate and upheld by the Sessions Court. As far as the dispute in respect of the possession or ownership or any other claim is concerned that is to be decided by the civil court.

7 Present criminal application is without any merit and the same is dismissed.

(JUDGE)

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