

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1421 OF 2015

Mohammed Ali Bhai. ... Petitioner.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Sanket Joshi i/b. Mr. Zaid Ansari, advocate for petitioner.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 31, 2015

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein happens to be the original complainant in
C.C. No. 55/M/2005 initiated before the Court of Metropolitan

Magistrate, 32nd Court, Bandra. The applicant herein had filed an application under Section 145 of the Code of Criminal Procedure, 1973, requesting the Court to issue process and initiate action in accordance with subsection 4 of section 145 of the Code of Criminal Procedure, 1973.

4 It was alleged that one Shaikh Dawood Abdul Rahman Parkar was the landlord of the suit property. That Mahadeo Shakhu Choudhari was the tenant of Shaikh Dawood Abdul Rahman Parkar. That Mahadeo Choudhari had filed RAE Suit No. 217 of 1993 in the Court of Small Causes at Mumbai seeking a decree of possession. The said decree was passed on 12/10/1999. That Shaikh Dawood Abdul Rahman Parkar wanted to create tenancy in favour of the present Petitioner only after decree was passed in the said suit. With the said intention, the original landlord accepted Rs. 1,20,000/- from the Petitioner as deposit and an amount of Rs. 10,000/- towards rent. That the Petitioner who was the proposed tenant had also paid Rs. 1,30,000/- on 3/12/1999. An agreement was reduced into writing.

The Petitioner had insisted upon the original landlord to put him into possession of the said premises and the same was being evaded by the respondent No. 1 on one or the other count and hence, the respondent No. 1 had not handed over the possession. The decree passed by the Small Causes Court was executed on 13/8/2003 and Smt. Khadija Aslam Parkar was put into possession. That She had handed over the possession to the present Petitioner.

5 It is the contention of the Petitioner that he had undertaken the repair works of the said suit property. That the respondents i.e. original landlord and others without obtaining any necessary orders from the Court had removed the main door and lock of the said suit premises and committed criminal trespass. That Smt. Naushaba N. Quereshi who happens to be the wife of the Constituted Attorney approached the police station and lodged a report on 24/8/2003.

6 The present Petitioner had approached the landlord on 8/9/2003. The daughter of the original landlord Mrs. Fatima

Dawood Parkar had informed the Petitioner that Smt. Hasina Parkar was not put in possession by her father. According to the Petitioner, accused persons i.e. the present respondent Nos. 2 to 5 had wrongfully taken possession of the suit premises and had threatened the Petitioner of dire consequences and therefore, he had initiated the proceedings under Section 145 of the Code of Criminal Procedure, 1973.

7 The learned Magistrate by an order dated 16/10/2012 was pleased to dismiss the application. The Magistrate had rightly observed that under Section 145 of the Code of Criminal Procedure, 1973, it was incumbent upon the Petitioner to substantiate his claim that there was a dispute over a particular property and that the respondent No. 2 is likely to cause breach of peace. The learned Magistrate had called for a report from the concerned police station regarding the dispute and the report was filed to the effect that there was no dispute on record. The Petitioner had admitted before the learned Magistrate that the respondent No. 2 happens to be the

original landlord of the suit property. That Mahadeo Choudhary was the tenant and that a suit was filed for eviction. The decree of eviction was passed against Mahadeo Choudhary on 12/10/1999. The decree against Mahadeo Choudhary was executed. On 22/8/2003 he got possession of the suit property and on 24/8/2003 the Petitioner was dispossessed as the respondent has removed the main door as well as the lock. Hence, the Petitioner was seeking restoration of the possession of the suit premises, which he has obtained on 22/8/2003. He was dispossessed within two days.

8 The learned Magistrate had observed that the respondent No. 3 in the said application i.e. Hasina Parkar was staying in the said premises on the date of enquiry of the application and the wife of Nazim Quereshi had lodged report at Vakola Police Station. The Petitioner had admitted before the Magistrate that after obtaining possession on 22/8/2003, he had put Nazim Quereshi into possession of the said property and Nazim Quereshi was Constituted Attorney of the Petitioner. Learned Magistrate has rightly held that the Petitioner

herein had not obtained possession of the suit property either from the original landlord or his daughter Mrs. Fatima Parkar. No documents were placed on record to substantiate his possession and in the absence of any such documents, there was no reason to believe that the present Petitioner was put into possession of the said property on 22/8/2003. There was neither in evidence to show that the Petitioner had put Nazim Quereshi into possession of the suit property. Moreover, the learned Magistrate has rightly observed that according to the Petitioner, original landlord obtained Rs. 1,30,000/- from him and issued rent receipts @ Rs. 45/- per month for the month of November, 1999 to January, 2000 and according to the Petitioner, the decree passed by the Small Causes Court was executed on 13/8/2003. It is admitted position that the original landlord was not in possession of the suit property from November, 1999 to January, 2000 and therefore, he could not have issued receipts to that effect. The decree of eviction was passed 3 years thereafter.

9 The learned Magistrate had rightly observed that Smt. Naushaba N. Quereshi was the eye witness to the incident. When she saw the respondents in the original application, removing the lock and breaking open the door, she had informed her husband about the same and at his behest had lodged the police report. The learned Magistrate has observed that Mrs. Fatima Parkar had made an attempt to help the Petitioner. According to her, she had obtained possession of the suit property and on the say of her father had handed over possession of the suit property to the present Petitioner. It was a matter of record that P.W. 3 Smt. Khatiza Aslam had obtained possession of the suit property at the time of execution of the decree. There is no evidence to show that the landlord had put his daughter Fatima into possession. It was noticed that P.W. 3 has very well attempted to support the present Petitioner for the reasons best known to her. Hence, the Petition was dismissed.

10 The present Petitioner being aggrieved by the said order had approached the Court of Sessions challenging the impugned order.

11 It was apparent on record that the parties in the original application i.e. the original landlord as well as the original respondent No. 6 were not made party respondents in the said appeal. The learned Sessions Court by a Judgment and Order dated 24/2/2015 was pleased to dismiss the Revision Application No. 185 of 2013. The Revisional Court had rightly held that there was no perversity in the order passed by the learned Magistrate and therefore, had rightly dismissed the revision. The Revisional Court had also observed that Smt. Hasina Parkar was in possession of the said room. According to her, the possession was handed over to them by her father in law i.e. the original landlord. The Revisional Court has further held that the Petitioner had failed to establish that the Petitioner or his power of attorney holder was in possession of the room No. 7 and was dispossessed on 24/8/2003. That there was no evidence to show that the Petitioner was put in possession on 22/8/2003.

12 The Petitioner herein has impugned the order passed by the Session Judge in Revision Application No. 185 of 2013 passed on 24/2/2015. The learned Counsel for the Petitioner submits that the applicant was misled by his advocate and the necessary documents were not brought to the notice of the learned Magistrate and therefore, has resulted in grave miscarriage of justice. The learned Counsel has prayed for remanding the matter to the trial court with liberty to the Petitioner to place on record the original receipts/documents and to lead additional evidence in respect thereof and also an opportunity to lead the evidence.

13 The Court cannot be oblivious of the fact that the proceedings were initiated in the year 2005 and after 10 years, it would not be proper to give a liberty to the applicant to file additional evidence only because he was misled by his Counsel.

14 Section 145 of the Code of Criminal Procedure, 1973 contemplates that it is in the nature of an enquiry where an Executive

Magistrate is satisfied from a report of a police officer or upon other information that a dispute, likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he has to make an order in writing, thereby disclosing subjective satisfaction for requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

15 In the present case, it is admitted position that there was no evidence before the Magistrate to show that there was dispute over the suit premises between the present Petitioner and the original respondent No. 1. The Petitioner had not taken any other legal action against the respondents for having received an amount of Rs. 1,30,000/- and other amounts. There was nothing on record to show that there would be breach of peace. In fact, the wife of the Constituted Attorney had approached the police station and at that

time, the police had filed a report that there was no dispute between the parties.

16 Any action under Section 145 of the Code of Criminal Procedure, 1973 has to be taken in consonance with the Section 144 of the Code of Criminal Procedure, 1973. That Section 144 of the Code of Criminal Procedure, 1973 deals with immediate prevention and speedy remedy and therefore, before invoking such provisions, the statutory authority has to be subjectively/objectively satisfied regarding the existence of circumstances showing the necessity of an immediate action.

17 In the present case, even according to the Petitioner, he was in possession of the said room only for two days i.e. 22/8/2013 to 24/8/2013. No case was made out by the Petitioner for initiating action under Section 145 of the Code of Criminal Procedure, 1973 and at this belated stage, it would not be proper in the course of admission of justice to allow the Petitioner to file additional

documents to show that he was in possession of such premises on 22/8/2013.

18 Upon instructions, the learned Counsel submits that no criminal proceedings are pending against the respondents in respect of the incident, which had occurred on 24/8/2013.

19 In view of this, the Petition being sans merits stands rejected. Rule is discharged. Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)