

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4335 OF 2012
WITH
CRIMINAL WRIT PETITION NO.4336 OF 2012

Mohd. Saboo Siddiq Fakir Mohd.

...Petitioner

Versus

The State of Maharashtra & Anr.

.... Respondents

Mr. K.H. Holambe-Patil for the Petitioner

Mr. V.B.K. Deshmukh for the Respondent No.1-State.

Mr. V.K. Sharma for the Respondent No.2.

CORAM:-M.L. TAHALIYANI, J.

DATED : -3/3/2015

P.C.

Admitted. Respondents through their respective counsel waive service. By consent of the parties taken up forthwith for final hearing.

2. Heard learned counsel Mr. Holambe Patil for the Petitioner and learned counsel Mr. Sharma for Respondent No.2 -Aisha Bai Adam Molidina Trust.

3. Dispute is in respect of Room No.9, situated at Aishabai Building, 3rd floor, 156, Zakaria Masjid Street, Pydhonie, Mumbai.

Deceased Allarakha Ibrahim @ Kaluchacha was found murdered in the said room. Crime No.85 of 2012 under sections 302 and 397 of the IPC was registered by the police and one Mr. Hanif Allarakha Diwan was arrested in connection with the said murder as he was identified in C.C.T.V. footage. Since there was nobody to take care of the room, the same was sealed by the police.

4. The Petitioner made an application for grant of possession of said room before the Trial Magistrate. At the same time an application was made by the Respondent No.2 through its representative Mr. Motiwalla for the same relief. After hearing both the Applicants and learned APP for the State learned Magistrate came to the conclusion that Trust was the owner of the room and therefore was entitled to possess the said room. Said room was therefore, handed over to Respondent No.2.

5. It is this order which is challenged by the Petitioner in the present petition. Learned counsel Mr. Holambe Patil has submitted that Petitioner claims to be the grandson of brother of grandfather of the deceased. The Petitioner claims to be legal heirs of the deceased and in that capacity he claims possession of the room. As already

stated learned Magistrate had turned down the prayer of the Petitioner. Learned counsel Mr. Sharma has submitted that Petitioner is not legal heir of the deceased and there is no proof thereof. He further submitted that Petitioner was never in possession of the room and therefore, in that capacity also he cannot claim possession of the room. I have gone through the affidavit submitted by Respondent No.1. It appears that the Petitioner had appeared on scene after the death of deceased and he had identified the deceased. He had also identified the accused on the basis of the C.C.T.V. footage. It is in this circumstance that dead body of the deceased was handed over to the Petitioner. Contention of the learned counsel Mr. Holambe Patil that since dead body was handed over to the Petitioner, room also should have been handed over by the police to him cannot be accepted.

6. In the first place learned Magistrate should have refrained from passing any order in respect of room because it was not seized under section 102 of the Criminal Procedure Code. In any event since the possession has already been handed over and the Respondent No.2 is in the peaceful possession of the room, Petitioner is at liberty to move the competent Civil Court for seeking necessary relief.

7. I do not find any substance in the petitions, writ petitions stand disposed of accordingly.

(JUDGE)