

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.636 of 2016**

Pawan Kumar & Sons (H. U. F.) Through Manager Pawan Kumar Laharwani Aged About 50 Years S/o Jagatram Laharwani, R/o Green City Colony Basantpur, Rajnandgaon, Tahsil Rajnandgaon, Civil & Revenue District Rajnandgaon, Chhattisgarh.

---- **Petitioner**

Versus

State of Chhattisgarh Through District Magistrate, District Rajnandgaon, Chhattisgarh.

---- **Respondent**

For Petitioner	Shri Rakesh Thakur, Advocate.
For respondent/State	Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2016

1. The instant petition has been preferred against the order dated 04.03.2016 passed by the Sessions Judge, Rajnandgaon in Criminal Revision No. 67 of 2015. vide the impugned order, the court below exercising its revisional jurisdiction has affirmed the order dated 15.10.2015 passed by the JMFC, Rajnandgaon, in Criminal Case No.1011 of 2014.
2. The relevant facts for adjudication of the present dispute is that, the dispute in the present case revolves around a shop/godown situated at Civil Lines, Rajanandgaon, of which the petitioner is the owner. The petitioner had rented the said shop to one Sai Prakash Property Developer, Bhopal on 11.02.2010. Somewhere in the year 2013, a

complaint was lodged against the said company and the police authorities registered a case against the company and its employees for the offence under Sections 420, 406 and 409/34 IPC in Crime No.1004/2013 at Police Station, City Kotwali, Rajnandgaon. The said case is still pending consideration.

3. In between, the petitioner moved an application under Section 451 CrPC for grant of vacant possession of the said shop to the petitioner as the shop belongs to the petitioner and he is losing the rented income from the company to whom the shop was given on rent.
4. The court below i.e. JMFC, Rajnandgaon, vide order 15.10.2015 in Criminal Case No.1011 of 2014 rejected the said application on the ground that the nature of claim raised by the petitioner is of civil nature and that the said relief could not be granted in exercise of powers conferred upon the court under Section 451 CrPC.
5. The said order dated 15.10.2015 was put to challenge by way of revision petition before the Sessions Court, Rajnandgaon where the case was registered as Criminal Revision No.67 of 2015. The revisional court also vide impugned order dated 04.03.2016 have rejected the revision petition upholding the order of JMFC, Rajnandgaon.
6. Learned counsel appearing for the petitioner assailing the said orders submits that since the property of the petitioner is in custody of the police authorities as the entire shop has been sealed by the police, the only remedy available to him is one under Section 451 CrPC and

the court below should not have rejected the same. It is also contended that taking into consideration the fact that the shop of the petitioner is not required for the purpose of trial against the accused persons, the said shop ought to have been opened by the police authorities so that the possession of the same could have been taken by the petitioner and can be used for adding his income as he is being deprived of the rental income of the said property.

7. It was also contended by the counsel for the petitioner that since the property has been sealed by the police authorities under the powers coffered upon them, the only remedy available to him was the powers conferred upon this court under Section 482 CrPC and there is no other remedy left.
8. However, counsel for the State opposing the petition submits that so far as police authorities are concerned, when they raided the premises, they found that there are large number of articles belonging to the company or the persons to whom the petitioner had given the premises on rent and who are the accused in commission of the offence. He further submits that the impugned order itself clearly reflects that the property and goods seized in the said shop of the petitioner are large in quantity and therefore, it is not practicable/feasible to shift those articles to a different place and therefore, it is difficult to vacate the premises. Even otherwise, the two courts below have left the remedy open/available to the petitioner under the provisions of law for seeking vacant possession over the property. He further submits that taking into consideration the entire

facts and circumstances of the case, it cannot be said that the two courts below have committed an error of law in rejecting the application under Section 451 CrPC.

- 9.** Having considered the rival contentions put forth on either side and on perusal of papers what clearly culls out is the fact that admittedly the petitioner had rented the shop to Sai Prakash Property Developers, Bhopal. The said tenancy has not been cancelled till date. The only dispute is the fact that pending the tenancy, the person to whom the petitioner had given the said shop on rent have been implicated in a criminal case for the offence under Sections, 420,406 and 409/34 IPC. The said criminal case is still undergoing. There is large number of materials/articles seized by the police authorities which is lying in the shop in dispute which was given on rent to the accused persons.
- 10.** In the given factual matrix of the case, this court in exercise of powers conferred under Section 482 CrPC cannot direct the police authorities to get the property vacated and possession of the property be handed over to the petitioner herein which is otherwise in possession of the accused persons in criminal case. Even otherwise, Section 482 CrPC or for that matter the provisions of Section 451 CrPC cannot be invoked for relief of eviction and possession of a rented property. This relief which the petitioner is seeking for cannot be granted in exercise of powers under Section 482 CrPC. For such claim, the petitioner has other civil remedies available to him under the provisions of law.
- 11.** For the foregoing reasons, this court does not find any illegality or

infirmity on the part of the two courts below in rejecting the application under Section 451 CrPC. The petition being devoid of merit is liable to be and is hereby dismissed.

SD/-
(P. Sam Koshy)
Judge

inder