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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 350 of 2015.

Vilas Mahadeo MoreApplicant.
Vs
The State of Maharashtra & OrsRespondents.

Mr Chaitanya Pendse for the applicant.
Mr V.S.Babar for the respondents No. 2 and 3.
Mr Deepak Thakare, APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 27th April, 2016

P.C.

1) This is an application under section 482 of Cr.PC., challenging the order dated 5.12.2014 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No. 1358 of 2013 and the order dated 3.9.2014 passed by the learned Metropolitan Magistrate, in SCC No. 78/SW/2010 under section 203 of the Cr.PC.

2) The applicant herein is the real uncle of the respondents no.2 and 3. The respondent no.2 is the daughter of deceased Prakash Mahadeo More. The controversy involved in the present application revolves around room No.74 Pardiwala Chawl

No.89/91(A), Sitaram Jadhav Marg, Lower Parel, Mumbai– 400 013, which was alleged to have been in possession of the applicant herein at the time of the demise of Prakash More. The deceased Prakash More used to reside in Room No. 77 situated in the same building. It appears from the record that after the sad demise of Prakash More, a dispute about the ownership/tenancy and/or the possession pertaining to the said room no.74 arose between the applicant on the one hand and the respondents 2 and 3 on the other hand. The applicant subsequently filed complaint bearing C.C. No.78/SW/2010 against the respondents no. 2 and 3 claiming them to be an accused for committing offence punishable under sections 447, 448, 452 and 453 of the IPC. In the said complaint, it was prayed that directions may be issued to the police to carry out investigation under section 156 (3) of Cr.P.C.

The learned Magistrate thereafter recorded the verification statement of the complainant under section 200 and after hearing the Applicant / Complainant, was pleased to dismiss the complaint under section 203 of the Cr.P.C., by its order dated 3.9.2013 passed below Exh.1. The applicant being aggrieved by the same, preferred Criminal Revision Application No. 1358/2013, which has been

dismissed by the learned Special Judge (C.B.I.), Greater Mumbai by its Judgment and Order dated 5th December, 2014. The applicant has impugned the said two orders dated 3/9/2013 and 5/12/2014 by the present application.

3) Heard the learned counsel for the respective parties and with their able assistance, I have also perused the entire record annexed to the application.

The learned counsel for the applicant submitted that in the complaint itself the applicant has made out a prima facie case. It is submitted that at the time of demise of Prakash More, the applicant was in possession of the tenancy receipts pertaining to the said room No.74. It is his contention that because of the possession of the rent receipts, it can safely be inferred that the applicant was in possession of the said room at the time of the demise of Prakash More. He further submitted that it was an ostensible transaction and as a matter of fact the applicant herein used to pay the rent to the landlord of the said room, though the receipts were issued in the name of the deceased. He submitted that, the deceased used to reside in room no.77 and the dispute is pertaining to room no.74 situated in the said same building. It is submitted that the learned

Trial Court did not take into consideration various documents on the basis of which inference can be drawn that the applicant herein was in possession of the said premises. He further submitted that as it was the dispute over the possession of the said room No.74 between the applicant on one hand and the respondents no.2 and 3 on the other hand, the applicant herein has also instituted proceedings as contemplated under section 145 of the Cr.P.C. in the Court of Metropolitan Magistrate, 20th Court, Dadar, Mumbai, being Misc. Application No.182/N/10 on 31/7/2010 and the same is pending for final adjudication. He submitted that who was in actual possession would be decided by the concerned Magistrate in the said proceeding. He submitted that in view of the evidence available on record, it is a fit case for issuance of process. He lastly submitted that the orders passed by both the Courts below may be quashed and set aside by allowing the present application.

4) The learned counsel for the respondents no. 2 and 3 per contra, vehemently opposed the application and submitted that with a view to grab the property of the father of the respondent no.2, the applicant herein who is the real uncle, wants to take undue advantage of the situation. He submitted that the applicant had

filed the said frivolous complaint only to harass the respondent nos.2 and 3. He lastly submitted that both the Courts below after evaluating the evidence on record have recorded concurrent finding and interference at the hands of this Court is therefore not warranted. He prayed that the present application may be dismissed in limine.

5) The record discloses that the deceased Prakash More was residing in room No. 77, situated at 2nd Floor, Pardiwala Chawl No. 89/91(A), Sitaram Jadhav Marg, Lower Parel, Mumbai-400013 as a tenant. That the deceased was also having a tenanted premises bearing Room No. 74 in the said building. It further appears that after the marriage of the respondent no.2 who is the real daughter of the deceased Prakash More, the applicant herein extended help to the deceased during his illness. That after the demise of Prakash More dispute pertaining to the tenancy of room No. 74 arose between the applicant and the respondent no.2 herein. The applicant thereafter has filed the aforesaid complaint bearing C.C.No.78/SW/2010 before the learned Metropolitan Magistrate, 29th Court at Dadar, Mumbai alleging that the respondents No. 2 and 3 by breaking open the lock of the said room No.74 put up by the

applicant, have committed the offence as contemplated under Sections 447, 448, 452 and 453 of the IPC. The learned Magistrate while dismissing the complaint under section 203 of the Cr.P.C. has held that the applicant has failed to make out a case that he was in actual possession of the said disputed premises. That the documents produced by the applicant did not establish the actual physical possession of the applicant on room no.74. That the complainant/applicant herein has failed to prove his actual physical possession over room No.74 on the date of alleged commission of offence and, therefore, the learned Trial Court came to the conclusion that no prima facie case is made out for issuance of process for the offences alleged against the respondents no. 2 and 3. It has been further observed by the learned Magistrate that except the oral submissions of the complainant there is no evidence at all on record which would satisfy the prerequisites for constituting the offence under sections 447, 448, 452 and 453 of the IPC.

6) The learned Additional Sessions Judge while rejecting the revision application preferred by the applicant has observed that the matter between the applicant on the one hand and the respondents no. 2 and 3 on the other hand is purely of a civil nature

and there is no material available on record for issuance of process.

7) After scrutinizing the entire material on record, I am of the considered opinion that the applicant herein with a view to grab the tenanted property being room no. 74, situated in the said building which was rented out to the deceased Prakash More had filed the complaint with mala fide intention. It further appears from the record that the applicant is trying to exploit the situation by making allegations against the real daughter of the deceased and his own nephew. That the respondent no.2 is daughter and legal heir of the deceased Prakash Mahadeo More and with a view to deprive the respondent no.2 of her legitimate right, the applicant herein has adopted various proceedings so that the respondent no.2 may ultimately relinquish right from the property. The applicant has failed to produce any document on record which shows that he was in actual possession of the said room. Mere possession of the rent receipts of other person does not make the applicant to be the lawful claimant of the tenanted premises. In my considered opinion, the documents relied upon by the applicant does not make out any case that, he was in actual physical possession of the tenanted premises bearing room no.74 situated in the said building, at the time of

commission of offence. The learned trial Court after taking into consideration the material available on record has rightly dismissed the complaint filed by the applicant. In my view, the Misc. Application No.182/N/10 under section 145 of Cr.P.C. before the Magistrate, is also filed by the applicant with malafide intention and to pressurise the respondent nos.2 and 3.

8) I find no error either of law or on facts committed by the Courts below, to interfere with the impugned orders. The application being devoid of any merit is dismissed accordingly.

(A.S. GADKARI, J.)