

Anand

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

WRIT PETITION NO. 3034 OF 2015

Rajendra Murlidhar Bakare & anr. .Petitioners

Vs.

Vijay Baburao Bakare & ors. .Respondents

Ms A. C. Kaladharan i/b. Mr. N. G. Helekar, Advocate, for the
Petitioners

Mr. S. R. Ganbavale, Advocate, for the Respondent Nos. 1 to 5

Mr. V. Chate, APP, for the Respondent No. 6 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the Order dated 07.05.2015 passed by the learned Additional Sessions Judge, Kolhapur, by which the order of the learned Executive Magistrate, Kolhapur in Chapter Case No. 03 of 2013 dated 07.11.2013 was quashed & set aside.

3. Perused the papers. The Petitioners and the Respondents are related inter-se. There is a dispute between the Petitioners and the

Respondents with respect to an ancestral property situated within the local limits of Kasaba Karveer Municipal Council, Kolhapur. According to the Petitioners, they were in possession of the said premises and that on 02.03.2013, the Respondent No. 3 broke open the lock and destroyed the articles in the premises. The same is disputed by the learned counsel for the Respondents. With respect to the incident dated 02.03.2013, both, the Petitioners as well as the Respondents filed a complaint in the police station and cases were registered against each of them. On 02.03.2013, the police of the concerned police station submitted a report to the learned Executive Magistrate and stated that there was a possibility of breach of peace between the parties. Pursuant to the said report, the learned Executive Magistrate vide Order dated 08.04.2013 issued notices to the parties under Section 145 of the Code of Criminal Procedure (for short "Cr.P.C."). Thereafter, parties were heard and the learned Executive Magistrate directed parties to maintain status-quo. On 29.04.2013, spot inspection was done and on 07.11.2013, the learned Executive Magistrate was pleased to appoint Circle Inspector as a Receiver to take possession of the property in accordance with Section 146(2) of Cr.PC..

4. Being aggrieved by the said Order passed by the learned

Executive Magistrate dated 07.11.2013, the Respondents herein, challenged the same by filing a Revision Application in the Court of Sessions. The learned Additional Sessions Judge, Kolhapur was pleased to allow the said Revision Application i. e. Cri. Revision Application No. 177 of 2013 vide Order dated 18.06.2014 and accordingly, quashed and set aside the order of the learned Executive Magistrate, Kolhapur dated 07.11.2013.

5. Learned counsel for the Petitioners informs that prior to the impugned Order dated 07.05.2015, the Sessions Court had rejected the said Revision Application i. e. Cri. Revision Application No. 177 of 2013, which order was challenged by the Respondents in this Court. She submitted that this Court quashed the order passed by the learned Additional Sessions Judge, Kolhapur in Cri. Revision Application No. 177 of 2013 and remanded the matter back for fresh consideration, pursuant to which the learned Additional Sessions Judge heard the parties and passed the impugned Order dated 07.05.2015. A perusal of paras 10 to 13 of the impugned Order dated 07.05.2015 shows that the learned Judge after going through the papers had observed that after receipt of the report of the concerned PSI, the learned Executive Magistrate issued notice to both the parties to conduct a preliminary

hearing, so as to ascertain whether there was necessity to start proceedings under Section 145 of Cr.P.C.; and that after conducting the preliminary hearing, the order of status-quo was passed. The learned Judge also observed that the proceedings were conducted in accordance with Section 145(4) of Cr.P.C. and as such, there was no violation of the mandatory provisions as alleged by the Petitioners. No infirmity can be found in the findings recorded by the learned Additional Sessions Judge, Kolhapur, warranting interference in writ jurisdiction.

6. Accordingly, the Petition is dismissed & is disposed of.

(REVATI MOHITE DERE, J.)