

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 10 OF 2019

NANDU KESHAV BANDODKAR., ... Petitioner

Versus

STATE, REP. BY PANAJI POLICE
STATION, PANAJI AND ANR., ... Respondents

Mr. Vallabh D. Pangam, Advocate for the Petitioner.
Mr. S. R. Rivankar, Public Prosecutor for the Respondent no.1.
Mr. Ajit R. Kantak and Mr. R. Kantak, Advocates for the
Respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 4th April 2019

P.C.

The challenge in this petition is to the order dated 12.12.2018 passed by the learned Sessions Judge in Criminal Revision Application No.59/2018 by which the learned Sessions Judge has confirmed the order dated 23.07.2018 passed by the learned Sub-Divisional Magistrate, simplicitor fixing the matter for evidence. The question is whether this Court in exercise of inherent powers under Section 482 of the Code of Criminal Procedure, can and should interfere with such order. The answer, in my considered view, has to be in the negative.

2. The petitioner is party no.1 and the second respondent is the party no.2 before the learned Sub-Divisional Magistrate in a proceeding under Section 145 of the Code of Criminal

Procedure. The petitioner claims to be a tenant of the land which is subject matter of dispute and it is contended that there are orders passed by the tenancy Court in favour of the petitioner and even the application for seeking a negative declaration filed by the second respondent has been dismissed. On the basis of this, it is contended by Mr. Pangam, the learned Counsel for the petitioner, that it was not open to the learned Sub-Divisional Magistrate to direct recording of evidence.

3. Mr. Kantak, the learned Counsel for the second respondent, submits that sub-section (4) of Section 145 of the Code of Criminal Procedure contemplates and empowers the Magistrate to record evidence, if any, and therefore, there is no irregularity or illegality in the order passed.

4. I have carefully considered the circumstances and the submissions made. The order dated 23.07.2018 passed by the learned Magistrate was challenged by the petitioner in revision application before the learned Sessions Judge which has been dismissed on 12.12.2018. Be that as it may, it is now well settled that the proceedings under Section 145 of the Code of Criminal Procedure are summary proceedings. The jurisdiction exercised by the Magistrate under the said section is not a plenary jurisdiction but conditional jurisdiction which springs into action when the Magistrate is satisfied of the possible breach of public

peace on account of a dispute as to possession of immovable property, between two or more parties. The Magistrate in such proceeding is only concerned with the factum of possession without any reference to the merits or right to possess the property in dispute.

5. Sub-section (4) of Section 145 of the Code of Criminal Procedure specifically empowers the Magistrate to record evidence, if any, if he thinks necessary. Thus, it is difficult to see as to how an order merely fixing the matter for evidence can be said to be without jurisdiction or improper so as to require interference. It may be noted that it will always be open to the petitioner to raise all such contentions based on the order passed by the tenancy Court before the learned Magistrate who shall consider the same while deciding the matter.

6. In that view of the matter, no case for interference is made out and accordingly the petition is dismissed.

7. At this stage, Mr. Pangam, the learned Counsel for the petitioner, states that the matter before the learned Sub-Divisional Magistrate is of the year 2012 and it may be expedited for which the learned Counsel for the second respondent has no objection.

8. In such circumstances, the Sub-Divisional Magistrate is directed to decide the matter as expeditiously as possible and preferably within a period of six months from the receipt hereof. The parties to co-operate for time bound disposal of the matter.

C. V. BHADANG, J.

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