

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO.41 OF 2018**

Mrs. Vaishali Yeshwant Kerkar
alias Maria Angelica D'Souza

.... Applicant

V/s

State & Anr.

.... Respondents

Mr. I. Agha with Mr. Ketan Morajkar, Advocate for the Applicant.
Mr. Mahesh Amonkar, Additional Public Prosecutor for Respondent No.1.
Mr. Parinda Kanekar, Advocate for Respondent No.2.

Coram : PRITHVIRAJ K. CHAVAN, J.

Reserved on : 7th August, 2019

Pronounced on : 21st August, 2019

ORDER :

Legality, propriety and correctness of the impugned orders dated 18/06/2018 and 03/07/2018 passed by the Sub-Divisional Magistrate, Panaji-Goa under Section 145 of the Code of Criminal Procedure has been impugned by way of the present revision under Section 401 of the Criminal Procedure Code.

2. Shorn of unnecessary details, facts germane for decision of the revision can be summarised as follows:

Petitioner and respondent no.2 are sisters-in-law in the

sense that respondent no.2 is the wife of petitioner's brother. Respondent no.2's husband expired on 15/01/2011.

3. The dispute is in respect of a mundkarial house which was registered in the name of father of the petitioner and the father-in-law of the respondent no.2.

4. An application was filed by the petitioner on 15/07/2011 for mundkarship under the Mundkar Act by contending that she was in fixed habitation of the dwelling house after the death of her father. The House Tax Receipt was in the name of petitioner's father namely Anton D'Souza. Form No.I and XIV also reflect his name in the rights column.

5. The respondent no.2 had also filed an application for mundkarship in the year 2014. She had also filed applications against the petitioner under the Domestic Violence Act. One more complaint was filed against the petitioner in the same year at Agassaim Police Station.

6. A complaint was registered before the Sub-Divisional Magistrate against the petitioner bearing no.MAG/SDM/PNJ/145/02/2014 under Section 145 of the Criminal Procedure Code. Respondent No.2 filed her reply on 19/05/2014. The petitioner filed her reply on 24/11/2014. The learned SDM by the impugned order directed the petitioner to hand over the possession of the subject house to the respondent no.2.

7. Heard Mr. I. Agha, the learned Counsel for the petitioner, Mr. Mahesh Amonkar, the learned Additional Public Prosecutor for the respondent no.1 and Ms. P. Kanekar, the learned Counsel for the respondent no.2.

8. Mr. Agha contends that the petitioner has been illegally dispossessed from the subject house pursuant to the impugned order. It is submitted that the order has been passed without giving an opportunity of being heard to the petitioner and, therefore, the order is bad in law. It is contended that the petitioner being the daughter of deceased Anton D'Souza has been occupying the subject house and, therefore, the possession needs to be restored by setting aside the

impugned order. The petitioner and her daughter have been rendered homeless and shelter-less, as according to the Counsel, they do not have any other accommodation.

9. On the other hand, Mr. Amonkar has supported the impugned order by stating that there is absolutely no infirmity or illegality as it has been passed after giving due opportunities to the respective parties and after considering the material on record.

10. Ms. P. Kanekar, the learned Counsel appearing for the respondent no.2 submitted that her father-in-law late Anton D'Souza was residing as a mundkar. He had three children out of which two are daughters namely the petitioner herein and one Ms. Fatima Fernandes. Her husband John D'Souza had died on 15/01/2011. After his death respondent no.2 continued residing in the said mundkarial house all alone. She is not only a widow but also handicapped, who is surviving only on the basis of pension being received from the Government through a social security scheme. It is submitted that the petitioner is married and residing with her husband and has no right of mundkarship whatsoever.

11. At the outset, while exercising revisional powers under Section 401 of the Criminal Procedure Code, qua an order passed under Section 145 of the Code of Criminal Procedure, unless the order is supported by no material or is clearly unreasonable or arbitrary or an outcome of extraneous consideration, revisional power should not be exercised for interference with such an order. This Court is not required to go into the sufficiency of the material which had satisfied the Magistrate. It is also required to be seen as to whether any prejudice has been caused to the petitioner. It is not the case of the petitioner that the Magistrate had no jurisdiction to pass an order under Section 145 of the Criminal Procedure Code. This Court cannot substantiate its own satisfaction to that of the Magistrate. What is required to be seen is whether there was subjective satisfaction of the Magistrate inasmuch as there was any apprehension of breach of peace concerning the subject property under Section 145.

12. A perusal of the impugned order reveals that the learned Magistrate observed the *inter se* relations between the petitioner and the respondent no.2 as sisters-in-law. He has taken into account the

criminal cases pending against the petitioner filed at the instance of the respondent no.2 on account of demand of dowry, ill treatment, etc. The learned Magistrate has also noted the fact that the husband of the respondent no.2 expired on 15/01/2011 and thereafter the petitioner, after entering into a criminal conspiracy, evicted the respondent no.2 from the mundkarial house by breaking the lock and putting new lock to the door.

13. Apparently, from the aforesaid submissions made before the SDM, he found that there was likelihood of breach of peace. It is indeed obligatory on the part of the Magistrate to prevent the breach of peace and ensure that the law and order is maintained. The impugned order further reveals that the respondent no.2 moved an application on 19/05/2014 to take immediate action against the petitioner as the respondent no.2 is physically handicapped with no support and shelter. The learned Magistrate has also considered the House Tax Receipt of the years 2017-18 and 2018-19 qua the mundkarial house which stood in the name of respondent no.2 which buttressed her contentions as regard her possession over the said house. The argument of Mr. Agha does not hold water that the

impugned order suffers from illegality as the petitioner has been rendered homeless and shelter less. On the contrary, the petition is silent about the petitioner's matrimonial house and as to whether she was residing with her husband in the matrimonial house. The argument of Mr. Agha that the petitioner was not heard also needs to be rejected for the simple reason that the impugned order reveals that written statement was submitted by the petitioner on 24/01/2014 by denying all the allegations levelled against her by the respondent no.2 in her complaint. The Magistrate has also considered the representation of the respective parties dated 05/01/2015 and 15/05/2015 respectively.

14. It is not the business of the Magistrate to go into the question of title. The object of Section 145 of the Criminal Procedure Code is merely to prevent a breach of peace by maintaining one or other of the parties in possession which the Court finds they had immediately before the dispute. It appears that the possession of the mundkarial house has been forcibly taken away from the respondent no.2 by the petitioner which has been rightly restored by the learned Magistrate pursuant to his order. The material on record had

convinced the Magistrate to arrive at his subjective satisfaction that there was breach of peace inviting such proceedings. It is pertinent to note that the order passed under Section 145 of the Code of Criminal Procedure would not affect the past, present or the future rights of the parties. It is a quasi executive action with an object of prevention of breach of the public peace.

15. Upshot of the aforesaid observations is that there is absolutely no substance in this revision petition which deserves to be dismissed and, as such, stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

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