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

**CRIMINAL WRIT PETITION NO.5508 OF 2018
WITH
CRIMINAL APPLICATION NO.159 OF 2019
WITH
CRIMINAL APPLICATION NO.231 OF 2019**

Mr. Niraj Shivkumar Maholay and Anr.	... Petitioners
Versus	
The State of Maharashtra and Ors.	... Respondents

Mr. Nilesh Ojha a/w Mr. Shivam Mehta, Mr. Mangesh Dongre, Mr. Abhishek Mishra i/b. Mr. Vijay S. Kurle for the Petitioners.

Mr. Niranjan Mundargi i/b. Ms. Vinaya G. Padwal for the Respondent Nos.2 and 3.

Ms. Pallavi Dabholkar, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 11th MARCH 2020.**

P.C.:

1 Heard the respective counsel. The petitioners herein impugn the judgment and order dated 17th October 2018 passed by the Sub-Divisional Officer, Bombay thereby evicting the petitioners from residing with his old aged parents and allow them to live peacefully in their house. The order has been passed under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In the present case, the

respondents herein are the parents of the Petitioner No.1. That, on 12th April 2018, the respondents herein filed an application under section 5 of the said Act before the Sub-Divisional Officer. The averments in the complaint are as follows :

- i) That the applicants therein had been to Singapore to meet their daughter. That in their absence the Petitioner No.1 herein has forged the signature of his father and has withdrawn an amount of Rs.1,03,00,000/- (Rupees One Crore Three Lakhs Only) from the account of the Respondent No.2 and Rs.1,23,80,000/- (Rupees One Crore Twenty-Three Lakhs Eighty Thousand Only) from the account of the Respondent No.3 by forging their signature in Bank of Baroda, Andheri (West) Branch;
- ii) Upon returning from Singapore, the Respondents therein had realised that they had been cheated and that their funds were misappropriated by the petitioners and therefore, they had no other alternative but to lodge FIR against their own son;
- iii) While in custody, the Petitioner No.1 had threatened his parents of commission of suicide in the eventuality, that they do not get him enlarged on bail. Therefore, they had made all arrangements to enlarge them on bail;
- iv) Thereafter, the respondents were being harassed by their son and daughter-in-law on various counts. That they had adopted different modalities to cause harassment to the applicants therein. Harassment, was to such an extent that the respondents had to approach the Commissioner of

Police;

- v) At last, the respondents had taken recourse to the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2 Notice was issued to the respondents i.e. the present petitioners. It was contended by the petitioners that in fact, the house in which the petitioners and the respondents are residing is not self-acquired property of the Respondent No.1 but is an ancestral property and that the petitioners have right to reside in the said property. It was submitted by way of written arguments that there are property disputes between the respondents and his brother as well as his sister. It was contended that the respondents are indulging into abusing the very dignity of their daughter-in-law.

3 It is admitted by both the counsel that the daughter-in-law of the respondents i.e. the wife of the Petitioner No.1 herein has filed a complaint against the Respondents before the 10th Metropolitan Magistrate, Andheri under the provisions of the Protection of Women from Domestic Violence Act, 2005. The said complaint was filed on 15th June 2017. It was contended that the Petitioner No.1 herein was paid a monthly salary of Rs.15,000/-. However, it is admitted that he has a brother in the said firm. The Petitioner No.1 has also filed a private complaint against his parents in

which the Court has been pleased to issue process against respondents for offences punishable under sections 406 and 420 of the Indian Penal Code.

4 At the outset, the learned counsel for the petitioners has vehemently submitted that the powers of eviction cannot be exercised by the Sub-Divisional Officer and the powers are to be exercised by the District Magistrate alone. The learned counsel has placed reliance upon the judgment of the Punjab and Haryana High Court in the case of *Harmohinder Singh Vs. State of Punjab and Ors.*¹, wherein the Court has held thus :

“We have gone through the Rules of 2012, framed by the Punjab Government, under sub-sections (1) and (2) of Section 32 of the Act of 2007. In our opinion, these Rules are comprehensive Rules, which deal with the object of the Act of 2007 and give sufficient mechanism to take care of the maintenance of senior citizens and protect their life and property. Not only a Tribunal has been constituted, but an Appellate Authority has been provided to hear grouses of the senior citizens with regard to their maintenance, including protection of their life and property. A complete mechanism in this regard has been provided. Under Rule 22 of the Rules of 2012, the District Magistrate has to ensure that life and property of senior citizens of the district are protected. The District Magistrate has ample power under the Cr.P.C., to protect a person, who is in possession of a property. If a person, who is in settled possession of a property, has been illegally dispossessed, the District Magistrate has ample power under the Cr.P.C., to protect possession of such person. But the District Magistrate, in our opinion, cannot be empowered to evict a person, who is in possession of a property for a long time. Such person can be dispossessed by following due process of law. If the District Magistrate is permitted to

1 (2018) SCC Online P&H 4071

summarily evict such person, it will cause great injustice to the person, who is in settled possession. He may be in possession under some right.”

5 The Court was placing reliance upon the Rules framed by the Punjab Government. In any case, there was a suit for partition and possession pending between the parties and the same has been taken into consideration.

6 The learned counsel for the respondents has submitted that all that section 22 speaks about, is conferment of powers on sub-ordinate officers, in order to achieve the aims and objectives of the said Act. Section 22 reads as follows :

- “22. Authorities who may be specified for implementing the provisions of this Act. - (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.
- (2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

7 There is nothing on record even to remotely indicate that such powers were not conferred upon the Sub-Divisional Officer. In fact, the very

object of this Act is to protect the life, liberty, dignity and property of senior citizens and parents who are in peril at the hands of their own children and grandchildren.

8 The learned counsel for the respondents has placed reliance upon the judgment of this Court in the case of ***Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and Ors.***, (Writ Petition No.10611 of 2018) wherein this Court has observed as follows :-

31. In my view, Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. The respondent no.1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent no.1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.
32. In my view, since under Section 23 of the said Act, a senior citizen is entitled to apply for a declaration of gift or transfer of his/her property by any other means given subject to the condition that the transferee shall provide the basic amenities and basic physical needs to such senior citizen and such child or grand child refuses to provide such amenities and physical needs, such senior citizen can apply for declaration of such transaction to be void, such senior citizen can even apply for recovery of possession from her child or grand child in the event of the child refusing to maintain such senior citizen and parents or does not comply with the obligations extending to the needs of senior citizen or such parents to enable such

senior citizen or parents to lead a normal life. Such parents and senior citizen can certainly apply for recovery of vacant possession of the property and for a relief restraining such child or grand child or his other family members who are claiming through such child from entering upon the property of such senior citizen or parents. In my view, there is thus no merit in the submission of the learned counsel for the petitioner that the Tribunal could not have passed an order of eviction against the petitioner and his family members from the tenament owned by the respondent no.1 under the provisions of the said Act.”

9 The contention of the petitioners is that the said property from where the petitioners are being evicted is not a self-acquired property but is an ancestral property and that the Petitioner No.1 has been living there with his wife since long and therefore, his possession cannot be disturbed. The object of the said Act of 2007 has to be achieved by all means as it is special statute to protect the interest of the parents and senior citizens to let them live in peace and with dignity.

10 Although the said property is ancestral property, the Court cannot be oblivious of the fact that the interest in the said property, would devolve upon the petitioners through the parents. As on today, the life, liberty, dignity and property of the respondents is of paramount importance.

11 It is also submitted by the learned counsel for the petitioners that as on today, the petitioners are residing in the share which is allotted

to uncle of the Petitioner No.1 and not in the share of the said property wherein the respondents are residing. The said property consists of ground + four floors and the petitioners are residing on the third floor whereas the respondents are residing on the ground floor.

12 It is also submitted that ever since the order of eviction is passed, the respondents are living peacefully and that the petitioners have not disturbed their possession in the said property. It can be inferred that, as of today, the petitioners and the respondents are not residing in a shared household or that they are residing under the same roof. No case is made out by the petitioners to set aside the findings and the order passed by the Sub-Divisional Officer. The other proceedings may take its own course.

13 In view of this, the petition being sans merit stands dismissed and disposed of accordingly. These observations are restricted to the petition under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and shall not be considered in any other proceedings between the parties.

(SMT. SADHANA S. JADHAV, J.)