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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.1122 OF 2019

1. Suresh s/o Sudama Sachdeo,
Aged about 54 years, Occ.: Business,
2. Lakhan s/o Suresh Sachdeo,
Aged about 27 years, Occ.: Business,
3. Dilip s/o Sudama Sachdeo,
Aged about 49 years, Occ.: Business,

R/o: Sindhi Camp, Manglurpir Road,
Akola, Tq and Dist: Akola.

..... PETITIONERS

// VERSUS //

1. The State of Maharashtra,
Through DGP, Akola.
2. Rajidevi Ashok Panjabi
Age :- abt 54 years, Occ.: Household,
R/o: Pachora, Tq. Pachora, Dist. Jalgaon,
3. Kamladevi Shaukatmal Sadarang
Age : abt. 51 years, Occ.: Household,
R/o.: Sindhi Colony, Murtizapur,
Tq. Murtizapur, Dist. Akola,
4. Kamladevi Manju Devalvaechha
Age: abt. 49 years, Occ.: Household,
R/o.: Dayanagar, Wardha.
Tq. and Dist. Wardha.
5. Meenabai Lalchand Chandani,
Age – abt. 49 years, Occ.: Household,
R/o: Pachora, Tq. Pachora, Dist. Jalgaon.

.... RESPONDENTS

Mr. S. S. Sohoni, Advocate for petitioners.

Mr. V. A. Thakare, APP for respondent No.1/State.

Mr. A. R. Deshpande, Advocate for respondent Nos.2 to 5.

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CORAM : AVINASH G. GHAROTE, J.
DATED : 04/01/2022

ORAL JUDGMENT :

Heard Mr. Sohoni, learned counsel for the petitioners, Mr. Deshpande, learned counsel for the respondent Nos.2 to 5 and Mr. Thakare, learned APP for the respondent No.1.

2. The challenge in the present petition, is to the order dated 24.09.2012, passed by the Sub-Divisional Magistrate under Section 145 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.), which holds that the respondent Nos.2 to 5 were in possession of the property in question and restrained the petitioners from causing any obstruction as well as the judgment of the learned Sessions Court, Akola, in Revision dated 05.11.2019 Criminal Revision Application No.177 of 2012, which holds the legality of the judgment of the learned Sub-Divisional Magistrate.

3. Mr. Sohoni, learned counsel for the petitioners, by inviting my attention to the cross-examination of Kamladevi/respondent No.4 submits, that there is an admission on her part that it was the petitioner No.1, who was in possession of the property in question and therefore, the learned Sub-Divisional Magistrate as well as the Court below have erred in passing the impugned order and judgment. He therefore, submits that the admission given by the respondent No.4 would bind her

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and ignorance of the same, would vitiate the impugned order and judgment. He further submits that the witness Bharumal, examined by the respondent Nos.2 to 5, did not support the contention of the respondents and therefore, on this ground also, the impugned order and judgment could not be sustained. He further submits that the learned Sub-Divisional Magistrate, could not have relied upon a document of 1971, to arrive at a finding that the petitioners were not in possession. Reliance is placed on **Ranbir Singh Vs. Dalbir Singh and others, (2002) 3 SCC 700** (para 8).

4. Mr. Deshpande, learned counsel for the respondent Nos.2 to 5 submits that the evidence of Kamladevi/respondent No.4, cannot be read in a piecemeal manner and has to be construed as a whole, doing which, it would indicate that the petitioners were never in possession till 20.07.2010 and had taken forcible possession thereafter, in view of which, in light of the proviso to Section 145(4) of the Cr. P.C, the finding rendered by the learned Sub-Divisional Magistrate as well as the learned Sessions Court were legal and proper.

5. Learned APP supports the impugned order and the judgment of the learned Sessions Court.

6. Perusal of Section 145 of Cr P.C. indicates that the learned Executive Magistrate has to determine the fact of actual possession of

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the subject of the dispute. While Sub-section (4) mandates, that the decision has to be rendered on the basis of who was in possession on the date of the order under Section 145(1) of Cr.P.C., the proviso however, enjoins upon the learned Magistrate to take into consideration a forcible and wrongful dispossession within two months next before the date on which the report of a Police Office or other information was received by the learned Magistrate, or after that date and before the date of his order under Sub-section (1), in which case, he may treat the party dispossessed as if that party had been in possession on the date of his order under Sub-section (1). In the instant case, it has been brought on record that Suribai the grandmother of petitioner Nos.1 and 3 and the mother respondent Nos.2 to 5 had passed away on 16.03.2010, in pursuance to which, her last rites were performed at the disputed premises, at which time the petitioners as well as respondent Nos.3 to 5 were present. It has also been brought on record that Sudama the father of the petitioner Nos.1 and 3 had already been separated from Suribai and was residing not in the disputed property but in a separate premises. An affidavit sworn by Sudama on 10.08.1971, before the Taluka Magistrate at Akola has been considered and relied upon by the learned Magistrate, which affidavit contains a statement by Sudama (the father of the petitioner Nos.1 and 3 and grandfather of petitioner No.2) that 13 years prior thereto, he has separated from his father and has no relations

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with him. This clearly indicates that the father of the petitioner Nos.1 and 3 was not occupying the disputed premises, at any point of time, even as on the date of demise of Suribai his mother, which in turn dispels the plea of the petitioners of ever being in possession. It has been deposed on record by the witnesses namely, Kamlabai/respondent No.4, Rajidevi respondent No.2, Dilip Narayan Panjwani and Bharumal that consequent to the demise of Suribai the petitioners, were not in possession. Kamlabai/respondent No.4, though in her cross-examination has stated that the petitioner No.1, was in occupation of the disputed property, this admission has to be read in consonance with her re-examination in which she has stated that the petitioners were residing in their own house at Shamshan Road, Sindhi Camp and after the 13th day ceremonies were over the respondent Nos.2 to 5 had locked the disputed premises and on 20.07.2010, when they had again revisited the same, possession was taken by the petitioners. Considering this position, it would be apparent, that the case would squarely fall within the proviso to Sub-section (4) of Section 145 of the Cr. P. C., as the report was lodged on 02.09.2010 and the dispossession is dated 30.07.2010 i.e. within a period of two months from the date of the report, considering which, in light of the language and mandate of the proviso to Section 145(4) of the Cr. P.C., the learned Sub-Divisional Magistrate as well as the learned Sessions Court have rightly held the respondent Nos.2 to 5

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to be in possession, in view of which, what has been held in **Ranbir Singh** (supra), does not assist the case of Mr. Sohoni, learned counsel for the petitioners, as **Ranbir Singh** (supra), is not a case, which was considering the proviso to Section 145(4) of Cr.P.C. That being the position, I do not see any merit in the petition. The same is accordingly dismissed. No costs.

JUDGE

Sarkate