

Anand

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

WRIT PETITION NO. 1209 OF 2023

Piyush Chandrakant Kankekar .Petitioner
Age : 33 yrs., Occu : Service
R/o. S-2, Building No. 6, Hindnagar,
Tarabai Park,
Kolhapur (Maharashtra)

Vs.

1. The State of Maharashtra .Respondents
Through Sr. PI/Investigation officer,
EOW, Thane.
C. R. No. I-810/2022, Manpada Police Station
2. The Commissioner of Police,
Office of the Commissioner of Police,
Kharkar Alley,
Thane (W).

Mr. Raviraj R. Parmane, Advocate, for the Petitioner
Mr. J. P. Yagnik, APP, for the Respondents - State

**CORAM : SUNIL B. SHUKRE AND
M. M. SATHAYE, JJ.**

DATE : 21 APRIL 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

. Heard learned counsel for the respective parties.

2. It is the contention of the Petitioner that he is the
owner of Flat No. G-002, Ground Floor, Adriana Building, Palava

City, Phase-II, Dombivali(E) which has been given on rent by him to one Mr. Shibu Nair and Mrs. Shrividya Nair, initially, for a period of 12 months on leave and license basis from 10.07.2021 to 09.07.2022, which period was extended from 10.07.2022 to 09.07.2023. It is the contention of learned counsel for the Petitioner that this property, an immovable property, has been put under the seal by the EOW of the Thane City Police Station vide C. R. No. 810 of 2022 registered for the offence punishable under Sections 120B, 406, 409 & 420 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest Depositors (In Financial Establishments) Act, 1999.

3. Learned counsel for the Petitioner submits that since the Petitioner is the owner of the property and the property in question is an immovable property, it cannot be seized under Section 102 of the Code of Criminal Procedure by the police officer making investigation into crime. He has relied on the Judgment of the Hon'ble Apex Court in the case of ***Nevada Properties Private Limited Through its Directors Vs. State of Maharashtra and another***, reported in ***(2019) 20 Supreme Court Cases 119*** which has been followed by the Division Bench of this Court, Bench at Nagpur in the case of ***Vikram S/o Madhukar***

Labhe & ors. vs. The State of Maharashtra & anr. in *W. P. No. 636 of 2020* decided on *13.12.2022* to which Bench one of us was a party. He has also placed reliance upon the view taken by Division Bench of this Court in the case of *Sudhir Vasant Karnataki vs. State of Maharashtra & Ors.*, reported in *2011 ALL MR (Cri) 96*, wherein the word “any property” used in Section 102 of the Cr. P. C. has been interpreted to mean any movable property excluding immovable property.

4. Learned APP, on instructions, submits that the property in question was not in possession of the main accused – Mr. Shibu Nair and during the course of his police custody, the investigating officer has carried out panchnama of all the articles kept in the office and thereafter, the property in question is being handed over to the possession of the relative of the main accused – Mr. Shibu Nair and therefore, now, nothing remains in the Petition. He has also tendered a copy of the report dated 20.04.2023 which is taken on record and marked as ‘Document A’.

5. Insofar as law referred to us by learned counsel for the Petitioner is concerned, we do not find any quarrel about the

same. The law is well settled and the words “any property” used in Section 102 of the Cr. P. C. do not include immovable property and therefore, Section 102 of the Cr. P. C. cannot be pressed into service by any investigating officer for the purpose of seizure of the immovable property. But, the question here is as to whether the immovable property that was seized by the investigating officer by putting his seal on the lock of the flat in question is in the possession of the Petitioner or not and the answer to this question is relevant for the purpose of deciding the issue of local stand of the Petitioner.

6. It is well settled principle of law that possession of immovable property illegally taken over by one person from another person in lawful possession thereof must be returned to that person who has a right to retain the possession.

7. In this case, the Petitioner though owner of Flat No. G-002 was not in possession of the flat, as he had already given it on rent under the registered leave and license agreement on 10.07.2021 initially for a period of 12 months which period was extended by him for another 12 months and which would expire on 09.07.2023. The person to whom that flat was given on rent

by the Petitioner – Mr. Shibu Nair, as informed by learned APP is the main accused in the present crime. This would mean that Mr. Shibu Nair is in lawful possession of the flat in question as of date and he has a right to retain the possession till expiry of lease agreement, unless renewed further or terminated prematurely. So, the possession of the flat would have to be given back to Mr. Shibu Nair and not the Petitioner. It is seen from the report of the investigating officer ‘Document A’ that possession of this flat is being handed over to the relatives of Mr. Shibu Nair, the tenant inducted in the property by the Petitioner himself.

8. Now, if the investigating officer is directed to return possession of the tenanted property during validity period of the leave and license agreement, as claimed by the Petitioner on the ground that he is owner thereof, it would create further complications. It may amount to pre-mature termination of the leave and license agreement and it may also amount to committing an illegality involved in return of the possession to a person not entitled to it. It would also amount to permitting the Petitioner to make use of criminal jurisdiction for resolution of his civil dispute, which is not permissible.

9. In the circumstances, we find no merit in the Petition.

10. The Petition stands dismissed. Rule is discharged.

(M. M. SATHAYE, J.)

(SUNIL B. SHUKRE, J.)