



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3701 OF 2024

1. Rangnath Bhanudas Bhagat
Age 49, Occupation: Service
Residing at Sahayog Appartment,
Flat No.302, S.N.-48, Tapkir Wasti,
Pashan Sus Road, Susgaon,
Pune 411021

2. Bharati Rangnath Bhagat
Age 42 Occupation: Service
Residing at Sahayog Appartment,
Flat No.302, S.N.-48, Tapkir Wasti,
Pashan Sus Road, Susgaon,
Pune 411021

.....Petitioners

Vs.

1. Priyanka Ravindra Ghatage
Age 32, Occupation: Housewife
Residing at Prisam Society, Flat
No.203/A2, Aundh,
Pune

2. Ravindra Ghatage
Age 35 Occupation
Address: Sr.no.-39/2/2,
House No-415, Lane No-2,
Mate Nagar, Wadgaon Sheri,
Pune 411014

3. State of Maharashtra
(Police Inspector, ChandanNagar
Police Station, Pune

.....Respondents

Mr. Bhushan Raut with Mr. Vaibhav Lavande, for the Petitioners.
Mr. Ashish I. Satpute, APP, for Respondent No.3-State.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.
RESERVED ON : 27th AUGUST, 2024.
PRONOUNCED ON : 5th SEPTEMBER, 2024.

JUDGMENT :- (*Per Dr. Neela Gokhale, J.*)

1) The Petitioners seek quashing of FIR bearing No. 79/2019 dated 25th February 2019 registered with the Chandan Nagar Police Station, Pune for offences punishable under Sections 427, 448 and 453 read with 34 of the Indian Penal Code, 1860 (“IPC”) culminating in the Final Report No. 91 of 2019 dated 18th June 2019 filed in the Court of Judicial Magistrate First Class (Court No. 5) Shivaji Nagar, Pune.

2) The case of the Respondent No.1 (First Informant) as can be discerned from the FIR is that, she married the Respondent No.2 on 16th May 2016 and started residing with him in Flat No.401, Wing No.2, Springdale Society, Chandan Nagar Pune. The said flat is owned by the Petitioner No.1 and the Respondents had taken the said flat on leave and license basis from him.

2.1) It is the case of the First informant that, on 17th May 2017, her husband abandoned her, he left the house on the pretext of attending his friend’s marriage, but he never returned. She tried to get in touch with her husband, by calling him on his phone but he conveyed that, he is not interested in resuming co-habitation with her and will not return. In these circumstances, the First Informant continued to reside in the said flat alone.

Divorce proceedings, between her and her husband were initiated and are pending in the Family Court. Proceedings under the Domestic Violence Act are also filed by the First Informant against her husband which are also pending. On 24th February 2019 when she was in her brother's house, she received a phone call from a Police Havaldar from Shivrana Police Chowki, informing her that, the Petitioner No.1 had entered the tenanted flat and had removed her belongings lying therein and stored them in a tempo outside the house. The Respondent No. 1 with her family members went to the Police Chowki and made inquiries. She informed them that, there is an Order passed by the Family Court restraining her husband from evicting her from the premises and the Petitioners had no authority to break open the lock and remove her personal belongings including, table, chairs, tee-poi, sofa set, kitchen utensils, clothes etc. She went to the premises and saw that, all her belongings were strewn outside the house and lying in shambles.

2.2) It is the further case of the First Informant that, the Petitioners have illegally and unauthorizedly trespassed in her premises by breaking open her lock and damaged her belongings including household furniture, clothes, kitchen utensils, gold ornaments etc. She also states that an amount of Rs.50,000/- is missing from the house and that her belongings worth Rs. 10,00,000/- are damaged and gold ornaments worth Rs.30,000/- are stolen by the Petitioners. Hence, she filed the FIR impugned herein.

3) Pursuant to the investigation, the police officials concerned filed the Final Report in the Court of the Judicial Magistrate First Class, Pune.

4) Mr. Bhushan Raut, learned counsel appears for the Petitioners and Mr. Ashish Satpute, learned APP represents the State.

5) Mr. Raut brings to our notice a Leave and License Agreement executed by and between the Petitioner No.1 and the Respondent No.2 on 7th August 2017. He states that, the duration of the Leave and License Agreement was for a period of 11 months, i.e., between 5th April 2017 and 4th March 2018. He thus contends that, the period of license having expired, the Respondents were trespassers in his property and hence he was entitled to evict them and recover possession of his property. Mr. Raut also brings to our attention, Clause 12 of the agreement which reads as thus:

“(12) that if the licensee fail to pay the said compensation amount for any month to the licensor by the date provided herein above otherwise to observe and perform the conditions of the agreement or discontinue their service with the licensees, then the licensor shall have full rights to enter the premises and to terminate the agreement by giving 1 month notice, and on expiry of the notice period the licensees, shall remove their belongings and premises, use of the said premises and fittings and other paraphernalia lying therein”

He thus submits that, since the Respondent No. 2 had defaulted

in payment of license fee and the agreement itself having expired, he was well within his rights to recover possession of the flat and remove the belongings of the Respondents. It is also argued that, in any case the agreement was executed with the Respondent No. 2 and the First Informant was a total stranger occupying the flat. He thus contends that, no offence is made out and the FIR and charge sheet be quashed.

6) Per contra, Mr. Satpute strongly opposed the Petition. He contends that, the chargesheet clearly indicates that the entire household belongings in the flat were thrown outside by the Petitioners by breaking open the lock of the flat, admittedly in the possession of the Respondent No.1. There is an Order of the Family Court restraining eviction of the Respondent No.1 from the flat. He also points to Clause 14 of the License Agreement specifically providing for damages in case of default by the Respondents to pay license fee on time. He further contends that, the transaction is governed by the Maharashtra Rent Control Act and the Petitioners can only evict the Respondents from the flat by following the due process of law under the said Act. He thus argues that, cognizable offences as alleged in the FIR are made out and the Petition be dismissed.

7) Having examined the matter in detail, commission of a cognizable offence is clearly demonstrated. Firstly, a plain reading of the Leave and License agreement between the parties clearly indicates that, there is a clear provision in the agreement relating to the procedure to be

followed on refusal of the licensee to vacate the flat on expiry of the period of license. Clause 14 of the agreement clearly states that, the Licensor shall take necessary steps under the Maharashtra Rent Control Act to evict the Licensee and he shall be entitled to recover double the licensee fee till the flat is vacated from the Licensee. Hence, the Petitioners are not within their rights to break open the lock and barge into the flat, admittedly in the possession of the First Informant. Even *de hors* the condition in the Agreement, the parties are bound by the statutory provisions in the Maharashtra Rent Control Act and cannot take the law in their own hands. The Petitioners are not entitled in law to recover possession of the flat by breaking open the lock and entering the same without the permission of the occupant. His entry therein, without the permission of the First Informant is clearly illegal and there is no justification for the same.

8) The Supreme Court in its decision in the matter of *Krishna Ram Mahale Vs Shobha Venkat Rao*¹ dealt with this issue and has held as under:—

“8) It is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law....”

Thus, the act of the Petitioners in breaking open the lock of the flat without the knowledge and consent of the Respondent No.1 who was in

¹ AIR 1989 SC 2097

absolute possession of the flat clearly amounts to the offence of house breaking as alleged. Moreover, the act of taking away belongings of the First Informant including gold ornaments and cash also indicates commission of the offences as alleged.

9) Another pertinent aspect is the existence of a dispute between the First Respondent and her husband, i.e., the Respondent No.2. Matrimonial proceedings are pending in the Family Court. A perusal of the Orders placed on record passed by the Family Court reveals that, the Respondent No.2 had applied to the Family Court to direct the Respondent No.1 to hand over vacant and peaceful possession of the subject flat to the Petitioners. By Order dated 29th November 2018, the Family Court rejected the Application clearly holding that, *firstly*, it is not disputed that, both the Respondents were residing in the said flat; *secondly*, if such a direction was given to the wife, she would be rendered homeless; *thirdly*, if the husband wanted her to vacate the flat, he was to arrange for alternate residence for her and *lastly* and importantly, the Family Court also observed that, the owner is at liberty to seek vacant possession of the flat by adopting appropriate procedure under the Maharashtra Rent and Control Act.

10) Strangely, the Petitioners themselves placed this Order of the Family Court on record but while arguing the matter deliberately failed to point out the same to the Court. Mr. Raut tried to conceal this Order and even upon a query made by us in this regard by pointing out the related

content in the FIR, totally denied the same. This practice of counsel is reprehensible and quite unacceptable. A counsel is primarily an officer of the Court and owes a duty to the Court to reveal the true facts of the case. This clearly amounts to *supressio verri* on the part of the counsel of the Petitioners.

11) This leaves us with an impression that, the entire act of breaking and entering the flat, throwing out the belongings of the First Informant and trying to dispossess her was a well thought out and deliberate act and moreover done in collusion with the Respondent No. 2, husband of the First Informant, with the obvious intention of overreaching the Orders of the Family Court. Be that as it may, it is for the Family Court to deal with violation of its Orders by the Respondent No.2 through the Petitioners.

12) The overall conspectus in the matter *prima facie* discloses commission of cognizable offenses as alleged in the FIR. The Final Report is before the trial Court. The defenses of the Petitioners cannot be tested by this Court in its extraordinary writ jurisdiction. We are thus not inclined to entertain the Petition.

12.1) In view of the foregoing, the Petition is dismissed.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)