



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

CRIMINAL WRIT PETITION No.152 OF 2024

Dharamsingh Ramsingh Bayas,
Aged 47 years,
Occupation : Agriculturist,
R/o. Ambika Nagar, Ghatpuri,
Khamgaon, Taluka and District Buldhana. : PETITIONER

...VERSUS...

State of Maharashtra,
Through P.S.O. Police Station
Shivaji Nagar, Khamgaon,
Tq. and Distt. Buldhana. : RESPONDENT

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Mr. Anil Mardikar, Senior Advocate assisted by Mr. V.R. Deshpande,
Advocate for Petitioner.
Mr. A.B. Badar, Addl. Public Prosecutor for Respondent.

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CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 04th DECEMBER, 2024.

ORAL JUDGMENT : (Per : Nitin W. Sambre, J.)

1. Heard Mr. Anil Mardikar, learned Senior Counsel for the petitioner and Mr. A.B. Badar, learned Additional Public Prosecutor for the respondent.
2. The challenge is to the notice dated 13th January, 2024

issued in exercise of power under Section 149 of the Code of Criminal Procedure, wherein the petitioner is warned not to carry out any activity on the disputed place and shall not indulge into illegal activity which may give rise to the law and order situation.

3. Mr. Anil Mardikar, learned Senior Counsel by drawing support on the Division Bench Judgment in the matter of **Kamran Ishtiyak Ahmed Khan and another Vs. The State of Maharashtra and another**, delivered in Criminal Writ Petition No.552/2023, decided on 27.9.2023 would urge that the powers under Section 149 of the Code of Criminal Procedure invoked by the respondent for the cause cited in the impugned notice, renders the impugned notice unsustainable and the same is squarely covered by the aforesaid judgment in the matter of *Kamran Ishtiyak Ahmed Khan* (supra).

4. Apart from above, the existence of a civil dispute is a fact within the knowledge of the respondent and in such an eventuality, he would draw support from the pleadings in para (2) of the affidavit-in-reply of the respondent, which reads as under :

“2. It is submitted that on 13.1.2024 that one Gopal Shyamsundar Dube made complaint against the petitioner along with other persons regarding the ownership of land and creating obstructions by the petitioner and other persons on the field of Gopal Dubey having survey No.75/2. It is submitted that on 13.1.2024 at about 11.00 to 11.30 a.m. there is a civil dispute regarding the possession and ownership of farm field No.75 of

Ghatpuri Naka near Aakash Sankul in between Gopal Shyamsundar Dube, Deepak Ramesh Kumar Jhamban and Vijay Singh Narayan Singh Bais and the petitioner.”

5. In this background, it is urged that the notice impugned is not sustainable.

6. As against above, Mr. A.B. Badar, learned Additional Public Prosecutor fairly concedes that the powers conferred under Section 149 of the Criminal Procedure Code cannot be invoked for the purpose of passing an interim order restraining the petitioner from carrying out lawful activity in the property in relation to which the dispute is pending. However, he would claim that the powers under Section 149 of the Criminal Procedure Code can be invoked so as to ensure that the parties like petitioner does not engage in a cognizable offence which may give rise to disturbance of law and order or public. As such, he would claim that the latter part of the notice which reads ‘आपण किंवा आपल्या हस्तकामाफत..... नोंद घ्यावी’ can be said to be sustainable. We have appreciated the submission.

7. It is not in dispute that there existed a civil dispute in relation to Survey No.75/2, which is pending before the Civil Court.

8. In such an eventuality, the aggrieved party has every right to claim appropriate injunction in the pending civil proceedings.

9. If we peruse the notice issued in exercise of powers under Section 149 of the Cr.P.C., it cannot be inferred therefrom that the statutory powers referred to therein can be exercised for the purpose of putting an embargo on the rights of a party, who claims to be owner of the property in relation to which the civil dispute is pending. Rightly so, our attention is invited to the Division Bench Judgment in the matter of *Kamran Ishtiyak Ahmed Khan* and also **M/s. Rai Udyog Limited Vs. State**, delivered in Criminal Writ Petition No.622/2021, decided on 27.7.2022.

10. The relevant observations in the said judgments read as under :

“7. In this regard, reliance was placed by the petitioner on the judgment of this Court dated 27.07.2022 in M/s. Rai Udyog Limited Vs. State, passed in Criminal Writ Petition No.622/2021 wherein the provision of Section 149 of the Code were examined and an order similar to the one passed in the present matter was dealt with in the following terms :-

“10] A perusal of the above quoted provision, would show that a Police Officer is expected to interpose only for the purpose of preventing commission of a cognizable offence and that he can take appropriate steps in that regard. The question is, whether the Police Officer, while exercising power under Section 149 of the Cr.P.C., can issue a restraintment order or an order akin to an injunction against a party. Reliance in this regard is placed on behalf of the petitioner on judgment and order dated 27.03.2015, passed by a Division Bench of this

Court in the case of Shashikant Bhurya Kokani Vs. The State of Maharashtra & Ors. reported in 2015(2) BomCR (Cri) 701. While considering the scope of the aforementioned provision, in the said judgment, it was held as follows:

"11. Section 149 of Criminal Procedure Code empowers every police officer to interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence. Otherwise also, according to us, section 149 Cr.P.Code does not vest police officer in the exercise of jurisdiction under Section 149 Cr.P.C. to issue blanket order of injunction prohibiting any party from entering into the agricultural land. In our considered opinion, Respondent No.3 would not have issued impugned notice injecting the petitioner, more so when the appeals are pending adjudication. We are of the opinion that impugned notice (Annexure-F) issued by Respondent No.3 is unsustainable in law."

11] We are of the opinion that even if there was apprehension of a law and order situation being created at the spot in question, while exercising power under Section 149 of the Cr.C.P., the Police Officer (respondent No.1 herein) did not have the power or authority to issue a virtual injunction order against the petitioner - Company, which was undertaking construction on a piece of land. If any party sought to raise a dispute as regards the authority of the petitioner - Company to proceed with construction on the said piece of land, such a party would obviously have to

knock the doors of the competent Civil Court to obtain urgent order of injunction. In fact, as noted above, the individuals who sought to intervene in the present petition, had filed Writ Petition No.2027/2022, before this Court and they had themselves proposed to file a civil suit for enforcement of the alleged easementary rights, in the backdrop of which, the writ petition stood disposed of.

12] It is significant that in Section 149 of the Cr.P.C., quoted above, the word "interpose" is used, in the context of a Police Officer preventing commission of any cognizable offence. In Cambridge Dictionary, interpose is defined by stating "to put something between two things". In Collins Dictionary, interpose means "to intervene or step in". As per Marriam-Webster Dictionary, interpose means "to be or come between" and in Oxford Learner's Dictionary, interpose means "to place somebody or something between two people or things".

13] Applying the aforesaid meanings given to the word "interpose", in Section 149 of the Cr.P.C., a Police Officer is required to come between people or things to prevent commission of any cognizable offence. In the present case, even if the Police Officer apprehended commission of a cognizable offence, he was required to come in between persons and while doing so, ensuring that lawful activity was assisted and unlawful activities were prevented. The petitioner - Company carrying out development activity/construction lawfully could not have been restrained merely because some people gathered with the threat of committing cognizable offence. On the contrary, the Police Officer was expected to take appropriate steps by interposing and ensuring that lawlessness and unlawful activity was prevented. Those claiming any right to restrain the petitioner -

Company from carrying out its development/construction activity ought to approach the competent Civil Court for obtaining appropriate orders of restraint, in accordance with law. Instead, the respondent No.1 - Police Officer in the present case asked the petitioner - Company to do so.”

8. *Applying the ratio laid down in the above judgment to the facts of the present case, there is clear overreach demonstrated in the passing of the impugned order, which virtually restrains the petitioners from dealing with their own property and carrying out any construction thereupon; the order operates as an injunction upon the petitioners, which is impermissible under the said provisions. Consequently, we hold that the impugned order dated 22.02.2023 is in excess of the powers vested in the authority under Section 149 of the Code and accordingly quash and set aside the same.”*

11. In this background, we are of the view that the notice impugned dated 13th January, 2024 can be said to be contrary to the scheme of Section 149 of the Cr.P.C. as the authority who has issued the said notice cannot be said to be armed or clothed with the powers to put an embargo on the right of the petitioner for the cause which is cited in the notice.

12. That being so, the petition stands allowed.

13. The impugned notice dated 13th January, 2024 is hereby quash and set aside.

14. As regards the claim putforth by Mr. Badar, learned A.P.P.

that latter part of the notice could be said to be sustainable is concerned, we deem it appropriate to give liberty to the respondent to issue fresh notice to that effect in accordance with law.

15. The aforesaid view is expressed having regard to the fact that the language used in the impugned notice is based on an event which has led to the issuance of a composite notice to the petitioner.

16. With the above liberty to the respondent, we allow the present writ petition.

17. Issue appropriate notice, in case the cause to that effect exists.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)