



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

CRIMINAL WRIT PETITION NO.200 OF 2024

PETITIONERS : 1 **Mr. Ajay S/o Daryailal Mehta,**
Aged 65 years, Occ. Business/Partner of
M/s. Mehta Oil Company.

2 **Mr. Anuj S/o Ajay Mehta,**
Aged 36 years, Occ. Business/Partner of
M/s. Mehta Oil Company.

..VERSUS..

RESPONDENTS : 1 **Mr. Mohd. Abid Aamin Ranggonwala,**
Aged about 33 years, Occ. Business, R/o.
Rangoonwala Building, Fawara Chowk,
Gandhibag, Nagpur.

2 **State of Maharashtra,**
through Police Station Officer, Police
Station Ganeshpeth, Nagpur.

Mr R. M. Bhangde, Advocate for Petitioners.
Mr S. S. Sitani, Advocate for Respondent No.1.
Mr A. G. Mate, AGP for Respondent/State.

CORAM : **M. W. CHANDWANI, J.**

DATED : **24th MARCH, 2025.**

ORAL JUDGMENT

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsels appearing for the parties.

3. Before I proceed to deal with the controversy, let me discuss the law point on seizure of immovable property. The Full Bench of this

Court in the case of *Sudhir Vasant Karnataki vs. State of Maharashtra and Ors.* and other connected petitions, *2010 SCC OnLine Bom 1808* has ruled that in a criminal offence, an immovable property cannot be seized by the police under the provisions of Section 102 of the Code of Criminal Procedure. Rather, this judgment has been upheld by the Hon'ble Supreme Court in the case of *Nevada Properties Private Limited vs State of Maharashtra and Anr.*, *2019 (20) SCC 119*. Even, the Rajasthan High Court in the case of *Amrit Lal Kumawat and Ors. vs. The State of Rajasthan and Anr.*, *1998 SCC OnLine Raj 336*, relied upon by the petitioners, has opined that an immovable property cannot be seized by the police nor the Magistrate can pass any order under Section 451 of the Cr.P.C. in respect of such properties. Rather, there is no dispute on this aspect.

4. The controversy that lies between the parties is that the petitioners claiming themselves to be the tenants of the immovable property namely a Shop Block situated at Gandhibagh, Nagpur owned by respondent No.1. The contention is that during the intervening night of 01.04.2023 and 02.04.2023, respondent No.1 by committing theft, criminal trespass and breaking the lock of the premises has forcibly taken possession of the property pursuant to which, a crime bearing No.105 of 2023 has been registered with Ganeshpeth Police Station against respondent No.1. During the investigation of the said crime, the key of

the said Shop was seized by the investigating officer from possession of respondent No.1. After completion of the investigation, charge sheet came to be filed. The pendency of the civil suit between the petitioners and respondent No.1 is not disputed. The petitioners have filed an application for possession of the property under Section 6 of the Specific Relief Act, whereas respondent No.1 has filed the suit for temporary injunction against the petitioners not to disturb his possession on the premise that the possession has already been handed over by respondent No.1 and after handing the possession, the petitioners started demanding the amount. It is also not in dispute that the temporary injunction application filed by respondent No.1 has been rejected. The controversy with regard to the dispute lies in the criminal proceeding wherein, respondent No.1 applied for possession of the key which was seized by the police from his possession. The learned Trial Court rejected his application mainly on the ground that the proceeding under Section 145 of the Criminal Procedure Code was pending before the Sub Division Magistrate, Nagpur. A revision application came to be filed by respondent No.1 against the order of rejection passed by the learned Trial Court in Misc. Criminal Application No.1698 of 2023. The learned Sessions Judge after considering the facts, disposed of the proceeding by holding that the police cannot seize immovable property under Section 102 of the Cr.P.C. and therefore, directed the police to return the key to respondent No.1.

5. Mr. Bhangde, learned counsel appearing for the petitioners submitted that though immovable property cannot be seized in the crime but according to him, a key which is a movable property has been seized in the crime. According to him, a crime in respect of dispossession of the property including theft and trespass has been committed by respondent no.1 in a civilized society. According to him, the alleged key is a key of an immovable property. Rather, the crime proceedings mention respondent No.1 as the accused, in accordance with the principle that the benefit of the doubt in criminal proceedings goes to the accused. The learned counsel for the petitioners submitted that the learned Sessions Judge committed a serious error by overturning the order of rejection of the learned Trial Court by ignoring the very same principle. According to him, even under Section 456 of the Cr.P.C., the Criminal Court has power to restore the possession of immovable property if an offence in respect of dispossession of the property has been committed. According to him, though the petitioners have not applied for obtaining possession of the key on Supratnama but they have a serious objection against the direction to return the key to respondent no.1 during pendency of the trial. According to him, the key should be returned in a criminal trial only after its conclusion so that an appropriate order can be passed under Section 456 of the Cr.P.C. To substantiate his claim, he seeks to rely on the case of *Amrit Lal Kumawat* (supra), wherein the Rajasthan High Court in para 15 has held as under :

“15. It may also be pointed out that in the instant case the immovable property which was in dispute (the room situated on the first floor of the temple which was formally in possession of Ramanlal) was not seized by the police officer at any time. No seizure memo is available on the file of the lower Court. The site-inspection note however contains a recital that after the inspection of the site the keys of the room were seized by the investigating officer. It is, therefore, obvious that in the instant case no immovable property was seized by the police or any other authority. Only 2 keys had been seized by the investigating officer. The keys were movable properties and, therefore, they could have been seized by the police officer under Section 102 of the Criminal Procedure Code and the learned Judicial Magistrate was competent to pass orders regarding the keys only.”

Reliance is also placed on the decision of the Madras High Court in the case of *B. Lalitchand Nadar vs. State and Anr., 1990 SCC OnLine Mad 336*, wherein the Madras High Court in para 5 of the decision has held as under :

5. Learned Counsel appearing for the hirer would repel such a submission by stating that it is not as if the aforesaid decision had not been cited before the Court below and the same had not been considered. He would further submit that learned Magistrate, on careful scrutiny and scanning of the facts of the present case, found the aforesaid decision as not applicable to the case on hand and to accept such a view of the financier is not legally permissible, in the circumstances of the case. He would further submit that before learned Magistrate, a decision reported in 1987 Law Weekly (Criminal) page 487 (C. Gopalaswamy v. Nagarajan and two others) had been cited and he in turn relied upon the decision for arriving at a just decision in the case, in the sense of returning the interim custody of the vehicle to the hirer. He would invite my attention to paragraph 19 of the judgment, wherein a learned Judge of this Court observed as follows :

“It follows, therefore, from the above decisions that the power of the Court under S.451 Cr.pC. To order interim custody of the property, though discretionary, as is clear from the words “as it thinks fit” in the Section, has yet to be exercised on the basis of the well established judicial principles. It is true that regarding properties for the possession and use of which permits or licences are necessary, as in the case of motor vehicles, fire arms etc., the general rule underlying the return of properties has to be applied with slight modification. In the case of such properties, a licence or permit could be taken to reflect the true position regarding ownership of the property. In the case of vehicles, the additional factor that would be relevant will be the possibility of putting the vehicle to the best use, even during the period of interim custody. The return of the vehicle to one who has the registration certificate in his name and in the case of public vehicle who has the route permit in his name would therefore be quite more advantageous than to return it to one who has no such claim. It is on the basis of these principles that in the decision referred to by the learned counsel for the petitioner that the vehicle had been ordered to be returned to the person in whose name the registration certificate stood, and at times to the persons from whom the vehicles were seized. But all the above considerations are subject to one basic principle that the possession of that property by the claimant should have been a lawful possession and should not have been acquired through the commission of a crime. It is not difficult to discern the golden thread that runs through the web of these decisions that interim custody of property should not be granted to one, who has acquired possession of the same, through the communications of a crime-be “he the person from whose it was seized or be he the holder of the registration certificate or permit, or the person who can make the best use of the vehicle. One who has acquired possession of a property through unlawful means and through the commission of an offence ought not to be given even interim custody, to enable him to enjoy the benefits of his crime. When such a situation arises, considerations like the property being seized from him,

the registration certificate being in his name and he probably being the person who could best use the vehicle, would all lose their significance.”

Lastly, reliance is placed on the decision of the Kerala High Court in the case of **Giji vs. A. K. Gopinathan Nair, 1995 SCC OnLine Ker 130,** wherein the Kerala High Court in para 6 of the decision has observed on the same lines as under :

“6. The power of the Court under Section 451 Crl. P.C. to order interim custody of the property, though discretionary, as is clear from the words “as it thinks fit” in the Section, is seemed to be exercised on the basis of the well established judicial principles. It is true that, regarding properties for the possession and use of which permits or licences are necessary, as in the case of motor vehicles, fire arms, etc., the general rule underlying the return of properties has to be applied with slight modification. In the case of such properties, a licence or permit could be taken to reflect the true position regarding ownership of the property. In the case of vehicles, the additional factor that would be relevant will be the possibility of putting the vehicle to best use, even during the period of interim custody. The return of the vehicle to one who has the registration certificate in his name and in the case of public vehicle who has the route permit in his name, would therefore be quite more advantageous than to return it to one who has no such claim. It is on the basis of these principles that the vehicles are normally ordered to be returned to the person in whose name in registration certificate stood, and at times to the persons from whom the vehicles were seized. But, all the above considerations are subject to one basic principle that the possession of that property by the claimant should have been a lawful possession and should not have been acquired through the commission of a crime. It is not difficult to discern the golden thread that runs through the web of the decisions that interim custody of property should not be granted to one, who has acquired possession of the same through the commission of a crime- be he the person from whom it was seized or be he the holder of the registration certificate or permit, or the person who can make the best use of the vehicle. One who has acquired

possession of a property through unlawful means and through the commission of an offence ought not to be given, even interim custody, to enable him to enjoy the benefits of his crime. When such a situation arises considerations like the property being seized from him, the registration certificate being in his name and he, probably being the person who could best use the vehicle, would all lose their significance. It is seen that the petitioner has prima facie established that the bus and the documents in respect of the bus were entrusted with him in terms of the agreement filed as Annexure-I to this petition.”

6. The sum and substance of the argument of Mr Bhangde, the learned counsel for the petitioners is that the key is not an immovable property and the crime proceeds cannot be given to the accused, therefore, the order of the learned Sessions Judge is required to be set aside.

7. Conversely, Mr Sitani, the learned counsel for the respondent No.1 submitted that seizing of the key is nothing but the power of seizure of immovable property which is prohibited under the provisions of the Criminal Procedure Code. More particularly, Section 102 of the Cr.P.C., the power of seizure of police officer does not include seizure of immovable property. According to him, the Court cannot pass any order in respect of seizing of immovable property. He submits that he has initiated proceedings under Section 6 of the Specific Relief Act. He further submits that rejection of interim application has no bearing on this case, since respondent No.1 is entitled to possess the key and if any

order in the Civil Court is passed, then a decree can be executed in the Civil Court for restoration of possession but the Magistrate indirectly cannot do what the Civil Court is required to do. Therefore, he submitted that the judgment of the learned Sessions Judge is well reasoned and does not require interference.

8. I have heard the learned counsel for the petitioners, the learned counsel for respondent No.1 and the learned A.G.P. for respondent No.2/State. Having gone through the material available on record more particularly, the judgments impugned, it transpires that the key has been seized in the crime registered at the instance of the petitioners on the allegation of dispossession from immovable property, theft and criminal trespass. It is not in dispute that the lock by which the premise is closed belongs to respondent no.1.

9. Chapter XXXVI of the BNSS deals with disposal of the property, wherein the Magistrate is empowered during pendency of the trial to hand over any property (immovable) to the person who is entitled to possess the same. The provision further contemplates that the said order will be subject to the final order of disposal of the property at the conclusion of trial.

10. No doubt, Section 456 of the Cr.P.C. gives power to restore the possession of the immovable property to a person who has been

dispossessed at the conclusion of the trial in relation to an offence involving dispossession from immovable property when the accused is convicted for the said offence. To my mind, this power is an independent power in respect of whether the property has been seized in the crime or not. Therefore, this Section will not help the petitioners to argue that the key cannot be handed over to respondent No.1, in wake of the settled position of law that immovable property cannot be seized in the crime and as per submissions of the petitioners, the keys are not immovable property.

11. What remains is that the Magistrate has to consider who is entitled to possess the property pending the trial, particularly in this case, the key. The factum of dispossession is not disputed by the petitioners. Rather, as stated above, the suit for restoration of possession is pending before the competent Civil Court. I doubt whether the key seized in the crime is a crime proceed. The fact remains that as of today, it is an admitted position that respondent No.1 is in possession of the suit property and the key is of the lock which belongs to respondent No.1.

12. The learned Trial Court was right in rejecting the application more particularly, for the reason that the proceedings under Section 145 of the Cr.P.C. were pending at the relevant time and nobody informed the updated position to the learned Trial Court. Considering the submission, I need not go into the controversy whether seizure of key of

the immovable property will amount to the seizure of the immovable property as that will be taken care of in appropriate proceedings. For the present, even if it is presumed that the key is a movable property and it has been handed over by the order of the learned Sessions Judge to respondent no.1, considering Chapter XXXVI in respect of disposal of the property, I do not find that the ultimate result of allowing the application by the learned Sessions Judge can be faulted with. At the conclusion of the trial, if the learned Trial Court concludes that the offence of dispossession from immovable property has been committed, irrespective of this order i.e. the order of handing over the key to respondent No.1, the Court still has the power to exercise its authority under Section 456 of the Cr.P.C.

13. With the above observations, I do not find merit in the writ petition. Accordingly, it is **dismissed**.

14. Rule is discharged in above terms.

(M. W. CHANDWANI, J.)