

GAHC010038302023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./204/2023

INDRANIL BARKALITA
S/O LATE DIN BANDHU BARKALITA, R/O VILL.-BILASIPARA, WARD NO. 8,
P.O AND P.S.-BILASIPARA, DIST.-DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY P.P, ASSAM.

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent :

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

04.08.2023

1. Heard Mr. M.I. Hussain, learned counsel for the petitioner and Mr. P Borthakur, learned Addl. PP, Assam.
2. This application under Section 397/401/482 Cr.P.C., read with Article 227 of the Constitution of India is filed against the impugned order dated

16.12.2021, passed by the learned Sub Divisional Judicial Magistrate (M), Bilasipara in GR (BLP) Case No.648/2013, whereby the petition of the petitioner seeking a direction to the Officer-in-Charge Bilasipara, police station to remove the seal from the commercial house situated at Bilasipara Ward No.7 and to give interim possession of the sealed commercial house was dismissed.

3. The petitioner claims to be a lawful owner of the Commercial RCC House situated at Bilasipara town under Ward No.7. He rented the aforesaid house to one Sukur Ali who is representative of one organization called Happy Life SMS Realtors Ltd. Thereafter, an FIR was lodged on 15.07.2023 at Bilasipara PS against the Managing Director and some other agent of the said Happy Life SMS Realtors Ltd and accordingly a case being Bilasipara PS Case No.648/2013 under section 420/406 IPC was registered.

4. During the investigation, the police sealed the aforesaid entire commercial building including the portion where the petitioner was doing his business. According to the petitioner, though the petitioner approached the investigating officer to unseal the house but it was of no effect. Accordingly the petitioner approached the learned SDJM, Bilasipara by way of filing a petition.

5. The learned Magistrate called for a report from the Investigating officer (I/O). The I/O reported and the important portion of the report is quoted herein below:

“The sealed house is lying abandoned condition without repairing so the I/O in the report stated that the abandoned house is not required for further investigation and it may be unsealed and handed over to the petitioner for repairing purpose.”

6. However, the learned Magistrate not only rejected the aforesaid application but also further directed the SDPO Bilasipara, SP Dhubri and DGP

Assam to take necessary action against the I/O. The basic ground of such direction and rejection of the petition, according to the Magistrate was that the case involves a business of Chit Fund Company and they had misappropriated an amount of Rs.3 crores from innocent people and moreover the main accused in the case has not been arrested and he is absconding since 2013.

7. This Court is afraid that such an order can be passed in a case ignoring the settled proposition of law as laid down by the Hon'ble Apex court in the case of ***Naveda Properties Pvt. Ltd. Vs. State of Maharashtra & Others*** reported in ***(2019) 20 SCC 119***.

8. Before coming to the ratio laid down in the aforesaid case, this Court is also of the view that neither there is any allegation of involvement in the alleged crime against the landlord in the aforesaid chit fund case nor the learned Magistrate has come to any conclusion against the petitioner. Rather, the learned Magistrate below has directed action against the I/O, who submitted the report on the basis of his investigation and satisfaction that the house is no longer required for investigation.

9. In the case of ***Naveda Properties Pvt. Ltd*** (supra), the hon'ble Apex Court dealing with a similar issue in answering a reference whether the expression "any property" used in sub-section (1) of section 102 Cr.P.C., includes immovable property, after dealing with different judgments and provisions of Cr.P.C., at paragraph 34 answered the reference holding that the power of a police officer under section 102 of the Code to seize any property which may be found under circumstances that create suspicion of commission of an offence, would not include the power to attach, seal or seize an immovable property.

10. In view of the aforesaid settled proposition of law, this Court is of the considered opinion that the learned Magistrate has failed to exercise its

jurisdiction resulting in absolute miscarriage of justice. Accordingly, the aforesaid impugned order dated 16.12.2021 passed by the learned SDJM (M) Bilasipara in GR (BLP) Case No.648/2013 is set aside and quashed and accordingly the IO is directed to de-seal the property in question and hand it over to its lawful owner. However, it is provided that any material kept inside the house which is required for the investigation of the case can be seized following due process provided under law.

11. Registry is directed to send a copy of this order to the learned Magistrate.

12. In terms of the above, the instant petition stands disposed of.

J U D G E

Comparing Assistant