IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54731 of 2015

Arising Out of PS.Case No. -206 Year- 2015 Thana -CHAKIA District- EAST CHAMPARAN (MOTIHARI)

==

1. Brajesh Kumar Srivastava, S/o Surendra Prasad Srivastava, resident of village- Jamsari, P.S.- Uchkawa Gaon, District- Gopalganj, Branch Manager, Bettiah Branch, UAE Exchange and Financial Services Limited.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr. Ansul, Adv.
Mr. Anuj Kumar, Adv.
Mr. Archit Rajpal, Adv.
Mr. Shreyanshu Kumar, Adv.

For the Opposite Party/s : Dr. Mayanand Jha, APP

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-05-2016

This is an application invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for short ‘CrPC’) for quashing the order dated November 04, 2015 passed by the learned Chief Judicial Magistrate, Motihari in Chakia P.S.Case No. 206 of 2015 by which the learned Chief Judicial Magistrate has dismissed the application dated September 28, 2015, wherein it was prayed that the office premises of UAE Exchange and Financial Services Limited (for short ‘the Company’), Motihari, East Champaran, which was sealed by the police in connection with the aforesaid police case registered under Sections 420, 120-B, 467, 468, 471, 406/34 of the Indian Penal Code (for short 'IPC') and Sections 3, 4 and 13 of the Foreign Exchange Management Act, 1999 (for short 'FEMA') on the report of one Roshan Kumar, be unsealed and the Company be allowed to restore the business of the said Branch as it was incurring heavy loss due to the said sealing.

2. The facts concerning the instant case in brief are that the informant Raushan Kumar lodged a written information with Chakia Police Station at about 7.00 p.m. on September 23, 2015 alleging therein that in the year 2014 he had given his Voter ID Card and PAN Card to one Yogesh Mishra, travel staff of the Company to prepare a passport. He received his passport in one and a half months but the Xerox of the Voter ID Card and PAN Card were not returned and the same were kept by the aforesaid Yogesh Mishra. He went to Malaysia on that passport and after remaining there for five days, came back. On September 23, 2015, he came to know that on September 17, 2015 at about 11.00 a.m., by making his forged signature, Manjeet Kumar, Ankit Pandey, Chandramohan Chaudhary and Vikas Kumar Srivastava, all staff of the Company and Indradeo Sah, the Guard of the Company have defalcated Rs. 65,840/-. Similarly, they have also defalcated Rs.23,781/- by making signature of Indradeo Sah. The informant further alleged that these people defalcated the foreign currency. He also alleged that the employees of the Company also get

the passports prepared and they also deal with foreign currency. While preparing the passport, they return the original Voter ID Card and PAN Card and retain the Xerox copy of those documents, which are misused by the aforesaid employees of the Company by forging signatures of bonafide holders of those identity cards. When he came to know that foreign currency worth Rs.39 lakhs of the Company has been seized by the police near Chakia Toll Plaza, then he informed the police.

3. Consequent upon lodging of the First Information Report (for short 'FIR'), the police sealed the premises of the Company office at Motihari, East Champaran. They also seized currency and registers of the money transactions.

4. Thereafter, petitioner no.1 filed an application in the court of Chief Judicial Magistrate, Motihari on September 28, 2015 for unsealing the office premises of the Company and allowing the Company to restore the business of the said Branch as it was incurring heavy loss due to the said sealing. The aforesaid application of petitioner no.1 was rejected by the learned Chief Judicial Magistrate, Motihari, vide order dated November 04, 2015, which being relevant is reproduced below :-

> "4/11/2015 - The applicant, an employee of U.A.E. Exchange and Financial Services Ltd. has filed this application dated 28/9/2015 by which he has urged that the concerned authority had valid licence from R.B.I. in this regard up till 31st August, 2014, later on before one

month from the date of expiry of the licence according to the provision of Reserve Bank of India had applied for its renewal and according to the provision contained by R.B.I. his licence for this purpose is in existence unless cancelled. According to the applicant his transaction is fair and in accordance with the law and the police has sealed the said exchange centre restraining from its business and it is incurring very loss to the authority and its customers so kindly the said office be de-sealed so that business transaction may be performed.

The learned D.P.O. has appeared on behalf of State and has submitted that there is the record of valid licence up till 31 August, 2014 and the letter also to renew it so kindly appropriate order be passed.

Heard and perused the record. From perusal of the record and after hearing to the learned counsel it is evident that up till now there is no record which could clear that licence has been renewed and is up to date and in between the period there is serious allegation of committing of the offences as of 406/420/120B/467/468 of I.P.C. against the employees of the authority so in my view, if the office is allowed to its work after opening the seal the evidence regarding the offences might be destroyed so in my view, the application is not fit and accordingly it is rejected."

(emphasis supplied)

5. The aforesaid order dated November 04, 2015 is under challenge in the present application.

6. Mr. Ansul, learned counsel appearing for the petitioners has submitted that the petitioner no.1 is the Branch Manager of the Company at Motihari, incorporated under the provision of Indian Companies Act, 1956 having its head office at Kochi, Kerala, whereas the petitioner no.2 is the Company being represented by Brajesh Kumar Srivastava (petitioner no.1), who has been appointed and authorized to represent the Company in the cases relating to its

Motihari Branch. He has submitted that the Company deals in foreign currency on the basis of license issued by the Reserve Bank of India under Section 10 of the FEMA as authorized dealer in AD Category-II. The Company is also licensed to assist passengers in getting their passport made and is accredited by International Air Transport Association. The work of the Company involves collecting foreign currency from the intending sellers and pays them back in Indian currency. The foreign currency so collected is initially deposited at different branches of the Company from where it is sent to Patna Head Office and then to Delhi Head Office by Air Cargo. All these legitimate business is carried by and under the authority of law.

7. Mr. Ansul, learned counsel, has further submitted that as it happened on September 22, 2015, the staff of the Company was carrying the foreign currency equivalent to Rs.39 lakhs collected by Motihari and Bettiah Branch. None of it was Indian currency. Moreover, it was accompanied by the register showing details of the payments so made. While checking of the vehicles for cash transfer in election time, the vehicle of the Company was caught and the police seized the same. He has further submitted that thereafter the informant was grabbed by the police and was made to lodge flimsy and false FIR. The informant has unnecessarily mentioned one withdrawal by the Guard Indradeo Sah with which he is totally

unconnected. He has submitted that the transaction by Indradeo Sah is a genuine transaction with genuine document. Furthermore, the informant has alleged that Rs.65,840/- was defalcated by forging his signature, but it is not indicated as to when and where he had deposited the equivalent foreign currency.

8. He has submitted that the Company is an authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer vide its AD Category-II License No. 01/2006 dated August 21, 2013 issued by the Reserve Bank of India (for short 'RBI') under Section 10 of the FEMA and it had applied for renewal of its license on August 25, 2014 with the RBI in time and in pursuance of it the RBI issued letter bearing No.FE.CHN.FMID535/55.81.001/2014-15 dated August 29, 2014, wherein it was explicitly mentioned that when an application for renewal of money changer's license is submitted to the RBI, the license shall continue in force until the date on which the license is renewed or the application is rejected as the case may be.

9. He has further submitted that in pursuance of the aforesaid letter, the RBI, in exercise of its power under Section 10 of the FEMA renewed the license of the Company as an authorized dealer AD Category-II License No.01/2006 on January 04, 2016, which was valid until August 31, 2016 and will expire on September 1, 2016 unless an application for the renewal of license would be

made at least one month before the date of expiry and no rejection of the same would be communicated by the RBI. He has submitted that as the operations of Branch have been completely stopped, its customers are suffering heavy losses. A few of the customers served upon the petitioners legal notices demanding return of the mortgaged articles or jewellery. The Branch is sealed and the customers are agitated and confused as to how and where they can repay the loan installments and recover their mortgaged items.

10. Advancing his argument, he has further submitted that the sealing of the premises has been done with an ill motive and is completely illegal and unjust for the reason that the Company met all statutory requirements and followed all rules and regulations laid down in that regard and the action of the police in sealing the premises is a glaring example of executive arbitrariness and police high-handedness.

11. Per contra, Dr. Mayanand Jha, learned counsel appearing for the State has contended that during the period of Bihar Assembly Election, in exercise of powers under different election laws and rules thereon and for the purpose of maintaining peace and tranquility and also prevention of economic offences leading to affect the election processes, by the order of the District Magistrate, several teams were constituted headed by the Magistrates duly appointed and these teams

were deployed for conducting raids on different check-posts of the Motihari District. Simultaneously, police team was also working for checking at different posts under the control of the Magistrate concerned.

12. He has further contended that on September 22, 2015 at 12.35 p.m. the police team headed by the Circle Inspector, Chakia was engaged in checking process at Toll Plaza located at Persauni Khem, Chakia within the jurisdiction of Chakia Police Station. In the meantime, a Bolero car, bearing Registration No.BR-05H 4303 stopped at the Toll Plaza. In the process of checking, it was found that two sealed plastic packets having reference no. 025 were kept inside the vehicle in suspicious situation. In presence of the Circle Officer, Chakia, who was present there in the capacity of the Magistrate-in-Charge, one of the packets containing foreign currency of Quibati Dinar, Saudi Rial, US Dollar, UAE Dirham etc. amounting to Rs.703070,96/- in terms of Indian valuation and the another packet containing foreign currency amounting to Rs.3209,031,17/- in terms of the Indian valuation were seized.

13. Dr. Jha, learned counsel, has further contended that on September 23, 2015, on a written complaint of the informant Raushan Kumar with the Chakia Police Station complaining forgery, preparation of false documents and criminal conspiracy by the office

bearers of the Company, an FIR was drawn in the Police Station and the police team raided the Motihari Branch of the Company and during raid, several objectionable documents were recovered, which created obvious ground in the mind of the Magistrate for taking quick and safe steps for preventing further interpolation in the documents by the accused persons and consequent thereupon on the decision of the Magistrate, the premises was locked and sealed and memo of seal was prepared in presence of witnesses and the Magistrate concerned in exercise of power under Section 102(1) of the CrPC.

14. However, Dr. Jha, learned counsel, has fairly conceded that on query by the raiding team, the office bearers of the Company showed the license for the foreign currency exchange business which was to expire on September 01, 2014, but on further query they did not show any paper to establish the claim that they had applied for further extension of license so that a reasonable inference could have been drawn that the license was valid on date of raid. He, however, admits that later on a registered letter was received by the Investigating Officer of the case on April 24, 2016 containing letters showing that the license of the Company had been extended till September 1, 2016. In view of the above submissions, Dr. Jha, learned counsel appearing for the State has submitted that the sealing of the premises cannot be held to be bad.

15. In reply, learned counsel for the petitioner has submitted that the counter affidavit filed on behalf of the Opposite Party No.2, which has duly been sworn by the Superintendent of Police, East Champaran, Motihari, it has been admitted in Paragraph No.6 that the license of the Company has been renewed and extended till September 01, 2016. Referring to Paragraph No.7 of the aforesaid counter affidavit, it has been submitted that the Superintendent of Police, Motihari has admitted that the police have no power to seal a company office premises and the police cannot close any company office carrying on business in foreign exchange vide valid license from RBI.

16. I have heard learned counsel for the parties and perused the materials available on the record.

17. Be it noted first that from the pleading of the parties, it would be evident that the Company was having valid license to deal in foreign currency on the basis of license issued by the RBI on the date of sealing of the premises.

18. There is no dispute to the fact that the license of the Company as an authorized dealer is valid until August 31, 2016. There is also no dispute to the fact that the premises in question has been sealed in connection with Chakia P.S.Case No. 206 of 2015 registered under Sections 420, 120-B, 467, 468, 471 and 406/34 of

the IPC as also Sections 3, 4 and 13 of the FEMA. It has to be seen in the context of the allegations made in the FIR as to whether the police or for that matter the Magistrate had any authority in law to seal the premises in question.

19. In order to examine this issue, the first question which would arise for consideration is whether the police have got any power either to inspect or to enquire or to carry out any search and seizure in respect of contravention of any of the provisions of the FEMA.

20. The FEMA replaces the Foreign Exchange Regulation Act, 1973 (for short 'FERA'). FERA was introduced in 1974 to consolidate and amend the then existing law relating to foreign exchange. FERA was amended in 1993 to bring about certain changes, as a result of introduction of economic reforms and liberalization of Indian economy. FEMA has come into force with effect from June 1, 2000. As a matter of fact, any offence under the FERA was a criminal offence punishable with imprisonment as per the CrPC, but under the FEMA, the contravention is considered to be a civil offence only punishable with some amount of money as penalty.

21. A reading of Section 10 of the FEMA would make it evident that the RBI may, on an application made to it in this behalf,

authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit. For such authorization application has to be made to the RBI and the authorization shall be in writing and shall be subject to the conditions laid down therein.

22. Section 12 of the FEMA gives power to the RBI to cause an inspection to be made by any officer of the RBI specially authorized in writing by it in this behalf of the business of any authorized person as may appear to it to be necessary or expedient for the purpose of –

(a) verifying the correctness of any statement, information or particulars furnished to the RBI;

(b) obtaining any information or particulars which such authorized person has failed to furnish on being called upon to do so; or

(c) security compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

23. Under Chapter IV of the FEMA, Section 13 deals with contravention and penalties. It prescribes that if any person contravenes any provision of this Act, or contravenes any condition subject to which an authorization is issued by the RBI, he shall, upon

adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

24. Section 14 of the FEMA gives power to the adjudicating authority to enforce the orders passed for contravention of any of the provisions of the Act punishable under Section 13. Sub-section (1) of Section 14 prescribes that subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section. Sub-Section (2) of Section 14 further prescribes that no order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudication Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied-

(a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

25. Section 15 of the FEMA provides for compounding of the contravention under Section 13.

26. Under Chapter V, Section 16 of the FEMA gives power to the Central Government to appoint Adjudicating Authority for the purpose of adjudication under Section 13. It prescribes that for the purpose of adjudication under Section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (3) a reasonable opportunity of being heard for the purpose of imposing any penalty. Sub-section (2) of Section 16 prescribes that the Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the

order published in the Official Gazette, their respective jurisdictions. Sub-section (3) of Section 16 mandates that no Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorized by a general or special order by the Central Government.

27. In view of the provisions of the FEMA discussed hereinabove, it would be evident that the contravention of any of the provisions of the Act does not constitute any criminal offence. Further, the police officers have not been given any authority either to institute a complaint or register an FIR on a complaint or to investigate the same for contravention of the provisions of the FEMA. The violation of the provisions of the FEMA can only be considered as civil offence punishable with some amount of money as penalty and in failure of compliance with the order passed by the Adjudicating Authority duly appointed under the Act by the Central Government, a person may be liable to civil imprisonment.

28. Thus, there is no doubt in the mind of this Court that the police or the Magistrate had no authority to carry out any inspection, search, seizure or confiscation of any property for violation of any of the provisions of the FEMA.

29. The next question which would be relevant for consideration is whether the police had any authority to seal the

premises of the Company in question and stop its business transaction. In this regard, it would be relevant to look to the averments made in the counter affidavit filed on behalf of the Superintendent of Police, East Champaran, Motihari (Opposite Party No.2). In the said counter affidavit, he has admitted that the police had no power to seal a company office premises and they cannot close any company office carrying on business in foreign exchange. The relevant portions of the counter affidavit are reproduced as under :

> "6. That it is also worthwhile to mention here that in course of investigation by the team, the office bearers of the company office showed the required license for the foreign currency exchange business, which was to expire on 01.09.2014 and on enquiry they did not show any paper to show that they have applied for further extension of license to the authority authorized or that so that a reasonable inference can be drawn that his license is valid till the date, the application for renewal is rejected. Later on a registered letter speed post was received by the I.O. of this case on 24.04.2016 containing letters showing that the license of the aforesaid business concerned has bee extended till September, 2016.
>
> 7. That, so far as the points required for clarification, it is submitted as follows :
>
> i. The police have got no power to seal a company office premises.
> ii. The police can't close any company office carrying on Business in foreign exchange vide valid license from RBI.
> iii. That on the very point of time when the investigation was conducted, the office bearers of the company did not show any paper showing

> that company office has filed an application before the authority for renewal license so that a reasonable inference can be drawn by the Magistrate concerned that the company had a deemed license. The office was sealed at the decision of the Magistrate on the compelling situation mentioned above."

30. Though the Opposite Party No.2 has virtually conceded that the police had no authority to either seal the business premises or close the business transaction of the Company, it is deemed necessary to examine the issue further as the learned counsel for the State has tried to justify the action of the police.

31. Apart from FEMA, the only other provision under which the offences are alleged to have been committed in the FIR is IPC, which is the primary penal law of India and the procedure for trial of the offences under the IPC is governed by the CrPC. The CrPC is a comprehensive and exhaustive procedural law for collection of evidence, examination of witnesses, interrogation of accused, arrests, search and seizure, safeguards and procedures to be adopted by police and courts, bail, process of criminal trial, method of conviction and the rights of the accused for a fair trial. The procedure for a criminal trial is primarily, except as otherwise provided, governed by the CrPC.

32. Section 102 of the CrPC defines the power of a police officer to seize certain property especially where commission of an

offence is alleged. The police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of commission of any offence. For better appreciation of the issue involved in this case, Section 102 is reproduced as under :

> "**102. Power of police officer to seize certain property.**— (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.
>
> (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.
>
> (3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same :
>
> Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale".

33. As already noted above, the police have no role in examining the contravention of any provision under FEMA, the primary question, which would be relevant now in the present case is whether or not the police have power to seal or seize an immovable property under Section 102(1) of the CrPC.

34. In this regard, it would be relevant to note that the question whether the police have power to seize immoveable property under Section 102 of the CrPC came up for consideration before a Division Bench of the Bombay High Court. However, in view of conflicting judgments of two Division Benches of the High Court, the matter was referred to the Full Bench. The Full Bench of the Bombay High Court considered the matter in detail in ***Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood through its Power of Attorney Holder Mr.Rajesh Baxi Chetna Properties Pvt. Ltd. Vs. The State of Maharashtra [MANU/MH/1561/2010]***, wherein, an elaborate analysis of the powers of the police under Section 102 Cr.P.C. was made. The Bench gave a split judgment with the majority observing that police cannot attach immovable property under Section 102 of the CrPC. The reference was answered as under:

> "86. To sum up, we answer the reference thus:
>
> Q.(a) Whether the words "any property" used in Sub-section (1) of Section 102 of the Code of Criminal

> Procedure, 1973 would mean to include "immovable property"?
>
> Ans. We, therefore, hold that the expression "any property" used in Sub-section (1) of Section 102 of the Code does not include immovable property. Question (a) is, therefore, answered in the negative.
>
> Q. (b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?
>
> Ans. No."

35. The judgment of the Full Bench makes it clear that the police cannot exercise its authority in attaching or sealing properties in criminal cases in exercise of power under Section 102 of the CrPC. The Bombay High Court has held that under Section 102 of the CrPC, the term property which the police can attach is only moveable.

36. The Full Bench of the Bombay High Court refused to extend the law laid down by the Supreme Court in the ***State of Maharashtra Vs. Tapas D. Neogy [(1999) 7 SCC 685]*** to immovable properties in order to bring them within the purview of Section 102, Cr.P.C. In paragraph no.66 of the judgment, the Full Bench has held as follows:

> "66. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring the offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and,

> eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A to 105-L of the Code and Section 68-C to F of the Narcotic Drugs and Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property."

37. Similar issue had arisen before the Kerala High Court in ***Kuriachan Chacko Vs. State of Kerala in W.P.(C) No.12275 of 2012 dated 26.07.2012*** and it has been held in paragraph 14 as under :

> "14. Section 102, by no stretch of imagination, can apply in a situation like this. Even though the words "any property" are there in Section 102, it is clear from a reading of sub-sections (1) to (3) together, that what is involved is not the seizure of immovable property. As already noticed, Section 83 contains a provision for attachment of immovable property and the power is conferred on the court itself. Under Section 102, the power of seizure is on the police officer and it has never envisaged a situation like the one herein, where a police officer can direct attachment of immovable property. Therefore, in the absence of a specific conferment of power on the Police officer, the steps for attachment made by the Sub Registrar herein, relying upon the request made by the Police officer, cannot hold good. The said letter, even going by the wordings therein, cannot amount to an order of attachment also. Therefore, merely because there is a power for the Police officer to conduct investigation and collect details of properties of the accused or others involved in that process, it can never be treated as an order of attachment for enabling the Sub Registrar to put an endorsement in the registers."

38. Recently, in ***M.T. ENRICA LEXIE & Anr. VS. DORAMMA & Ors. [(2012) 6 SCC 760]***, the Supreme Court examined the provisions of Section 102 of the CrPC. In the said case, two Indian fishermen belonging to Kerala State were killed by firing emanating from an Italian vessel, M.T. Enrica Lexie which was en voyage from Singapore to Egypt and passing through the Arabian Sea. The vessel was intercepted and persons on board were brought to the coast by Kerala Police. Investigation revealed that firing was resorted to by two out of six Italian marines, who were responsible for protecting the vessel from pirates. The stand of the vessel owners was that the crew had no control over action of marines deputed by the Italian Government. The limited issue in that case was whether the vessel and the marine, against whom a criminal case was pending, could be allowed to leave India. The Single Judge of the High Court allowed the writ petition filed on behalf of the vessel and its owners. A Division Bench, however, reversed the decision by holding that the question regarding release of the vessel could be agitated before the Magistrate having necessary jurisdiction under Section 457 of the CrPC.

39. After hearing the parties, the Supreme Court observed in ***M.T. ENRICA LEXIE*** (Supra) that the police officer in course of investigation can seize any property under Section 102 of the CrPC if

such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the CrPC, the police officer can seize such property which is covered by Section 102(1) of the CrPC and no other.

40. Coming back to the facts of the present case, it would be evident that the office premises of the Company, which was sealed by the police in connection with the aforesaid police case, is neither a stolen property nor the object of the crime nor has any link with the commission of any offence. It is not a property which is covered by Section 102(1) of the CrPC. Hence, the sealing of the premises in exercise of power under Section 102(1) of the CrPC by the police was patently bad in the eyes of law in view of the decision of the Supreme Court in ***M.T. ENRICA LEXIE*** (Supra).

41. Keeping in mind the ambit and scope of Section 102 of the CrPC and the ratio laid down by the Full Bench of the Bombay High Court in ***Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood*** (Supra) and the Kerala High Court in ***Kuriachan Chacko*** (Supra), this Court is also of the considered opinion that under Section 102(1) of the CrPC the police have no power to seal the

immoveable property and the word seize under Section 102 of the CrPC used under Section 102 of the CrPC would mean only actual taking possession of the moveable property. I find myself in complete agreement with the ratio laid down by the Full Bench of the Bombay High Court and the Kerala High Court in the aforementioned decisions with regard to the powers of the police officer to attach immoveable property under Section 102(1) of the CrPC.

42. Even otherwise, I find it a bit surprising as to how the learned Chief Judicial Magistrate could have passed the impugned order dated November 04, 2015 negating the prayer made by the petitioner for unsealing the premises.

43. It would be apparent from paragraph 2 of the impugned order, as quoted hereinabove, that the District Prosecution Officer appearing on behalf of the State had submitted that there is a valid license up till August 31, 2014 and the letter also to renew it. The learned Chief Judicial Magistrate completely ignored the submission made by the learned prosecutor and failed to apply his judicial mind to the facts of the case and the laws involved. The learned Chief Judicial Magistrate ought to have considered that the operation of the business being conducted by the Company under a valid license issued by the authorities competent to issue the same could not have been stopped due to any illegal act of any official of the Company. By

passing the impugned order, the learned Chief Judicial Magistrate has virtually abdicated his duty and thus failed in exercising the jurisdiction vested in him.

44. Regard being had to the discussions made hereinabove, the impugned order dated November 04, 2015 passed by the learned Chief Judicial Magistrate, Motihari in Chakia P.S.Case No. 206 of 2015 is hereby quashed. The Superintendent of Police, Motihari is directed to unseal the premises of the Company in question forthwith and allow the Company to run its legally operated business of the said Branch.

45. With these observations and directions, the application is disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR

U		T	