

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.428 OF 2016

Bhalchandra S/o Pundlik Alie
age: 64 years, occu: retired Teacher,
R/o Plot No.33, Madhyamik Shikshak Colony,
Nakane Road, Deopur
Tq. and Dist. Dhule

Petitioner

Versus

1 The State of Maharashtra,
Through Investigating Officer,
Deopur Police Station
District Dule.

2 Superintendent of Police,
S.P. Office, Dhule, Tq. & Dist. Dhule

Respondents

Mr.D.K. Thote advocate for the petitioner
Mr.K.S. Patil, APP for Respondents

CORAM : **R.M. BORDE & K.L. WADANE, JJ**

(Date : 13th APRIL, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Rule.

2 Heard. With the consent of the parties, petition is taken up
for decision at admission stage.

3 The petitioner is objecting to the order passed by the
Investigating Officer of seizing the immovable property, by taking

recourse to section 102 of Criminal Procedure Code (Cr. PC).

4 It is not necessary to go into the details, relating to the initiation of criminal proceedings and lodging of First Information Report (FIR) on 15.4.2014, at the instance of the petitioner. The Police Authority, during the course of investigation proceeded to conduct Panchanama of seizure of immovable property, by taking recourse to Section 102 of Cr. P.C. The action of Police Authority was subjected to challenge by tendering an application at Exh.1 to the Magistrate. However, the said application has been turned down by an order dated 28.1.2016 for the reason that, an application under section 457 Cr. P.C. is not maintainable. Section 102 of Cr. P.C. refers to power of the Police Authority to seize certain property. Sub-section 1 of Section 104 provides that, 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. Seizure of the property by taking recourse to section 102 of Cr. P.C. is referable to movable property. The property which is alleged to be suspected to have been stolen or which may be found to create commission of offence may be seized by taking recourse to aforesaid provision.

5 In the instant matter, the house property, by no stretch of imagination can be construed as stolen property or the property suspected to have been used for commission of offence. The investigating officer was not justified in taking recourse to section 102 Cr. P.C. and seize the immovable property.

6 Section 457 of Cr. P.C. refers to procedure by Police, upon seizure of the property. Since the provisions of section 102 are not attracted, as a necessary consequence, section 457 also cannot be said to have attracted. In the matters relating to immovable properties, the Executive Magistrate is empowered under the Cr. P.C. to take appropriate action taking recourse to sections 145 and 146 of Cr.P.C.

7 In the instant matter, the action of the investigating officer to proceed under section 102 of Cr.P.C. is illogical and as such the action of seizure of the property under the Panchanama dated 21.7.2014 needs to be quashed and set aside and it is accordingly quashed and set aside.

8 Rule is made absolute accordingly.

(K.L. WADANE, J)

(R.M.BORDE, J)