

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11260 of 2016

Arising Out of PS.Case No. -381 Year- 2015 Thana -KHAZANIHAT District- PURNIA

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1. Md. Istiyaque Alam @ Md. Ishtiyag Alam son of Late Md. Jabbar Resident of Village - Jani Naugachhia, P.S. - Naugachhia, District - Bhagalpur present residing at Islam Nagar, Madhopura, P.S. - K.Hat (Sahayak Khajanchi), District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Civil Surgeon-Cum-Chief Medical Officer, Purnea, District - Purnea.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-03-2018

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 16.01.2016 passed by the learned Chief Judicial Magistrate, Purnea in K. Hat P.S. Case No.381 of 2015 by which the application of the petitioner for direction to unseal the clinic of the petitioner has been rejected.

2. K. Hat P.S. Case No.381 of 2015 was registered on the basis of written report submitted by the Civil Surgeon-cum-Chief Medical Officer, Purnea on 13.06.2015 alleging therein that an enquiry was carried out in the clinic of the petitioner on the basis of



the complaint made by one Ajay Kumar Sah and it was found that the petitioner was practicing in all types of medicines including Allopathy. In his clinic ECG machine was also found. On his visiting card and prescription he had got printed degrees which were not obtained by him. On the basis of these imputations, the informant alleged that being a quack the petitioner was exploiting the innocent patients.

3. On the basis of the aforesaid allegations, a case was registered against the petitioner, inter alia, under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code (for short 'the IPC') as well as Section 17 of the Indian Medical Council Act and investigation was taken up. In course of investigation, the clinic of the petitioner was sealed by the police on 13.06.2015.

4. The petitioner filed an application in the court of Chief Judicial Magistrate, Purnea for unsealing the clinic, but the same was rejected vide order dated 06.01.2016 passed by the learned Chief Judicial Magistrate, Purnea.

5. Assailing the aforesaid order dated 06.01.2016, learned counsel for the petitioner submitted that the petitioner has got *bona fide* degree in alternative medicine from a recognized institute and was practicing in it, but on an erroneous charge a case has been instituted against him and his clinic has been sealed, which was



running since last five years. He is paying rent to the owner of the premises regularly. None of his patients had made any complaint at any point of time. He submitted that the court below erred in law in rejecting the prayer of the petitioner for unsealing the premises as the police have got no power under the Cr.P.C. to seal the immoveable property.

6. Per contra, learned counsel for the State submitted that the court below has rightly refused the prayer of the petitioner as he is a quack and was not holding any degree to practice in medicine. He was befooling the innocent patients and exploiting them. His aforesaid act is a social menace. He submitted that under Section 102 of the Cr.P.C. the police have got power to seize or seal certain properties which includes seizure of immovable property.

7. I have heard learned counsel for the parties and perused the record.

8. Section 102 of the Cr.P.C. defines the power of police officer to seize certain property especially where commission of an offence is alleged. For better appreciation of the issue involved in this case, Section 102 of the Cr.P.C. is quoted hereinbelow:-

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.”

9. From a reading of Section 102 of the Cr.P.C., it would be manifest that 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 may create suspicion of commission of any offence. The question whether the police have power to seize immovable property under Section 102 of the Cr.P.C. was considered by a Full Bench of the Bombay High Court in view of conflicting judgments of two Division Benches of the said High Court in **Sudhir Vasant Karnataki vs. The State of Maharashtra and other analogous cases**, [MANU/MH/ 1561/2010], wherein elaborate analysis of the power of the police under Section 102 of the 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 Cr.P.C. The reference made to the Full Bench was answered as under:

“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.”

10. The afore-stated Full Bench judgment makes it clear that the police cannot attach or seal immovable properties in criminal cases in exercise of powers conferred under Section 102 of the Cr.P.C.

11. In **M.T.Enrica Lexie & Anr. vs. Doramma & Ors., [(2012)6 SCC 760]**, the Supreme Court after examining the provisions of Section 102 of the Cr.P.C. held that the police officer in course of investigation can seize any property under Section 102 of the Cr.P.C. 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.

12. Coming back to the facts of the present case, it would be evident that the clinic of the petitioner which was sealed 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 Cr.P.C. Hence, the sealing of the clinic in exercise of powers conferred under Section 102(1) of the Cr.P.C. by the police was patently bad in the eyes of law. Even otherwise, the reasoning assigned by the learned Chief Judicial Magistrate, Purnea, for rejecting the prayer of the petitioner vide impugned order dated 06.01.2016 is erroneous. The learned Chief Judicial Magistrate, Purnea, has stated in his order that on completion of investigation the police had submitted charge-sheet on the basis of which cognizance of the offence has been taken and, thus, the clinic cannot be ordered to be unsealed. The said reasoning could not have been made a ground for refusing the prayer for unsealing an immovable property and the word seize under Section 102 of the Cr.P.C. would mean only actual taking possession of the moveable property.

13. Accordingly, the impugned order dated 06.01.2016 passed by the learned Chief Judicial Magistrate, Purnea in K. Hat P.S. Case No.381 of 2015 is set aside.

14. The Superintendent of Police, Purnea is directed to unseal the clinic of the petitioner forthwith. However, this order cannot be interpreted to mean that this Court has expressed any



opinion on the claim of the petitioner to practice in Allopath or in any
branch of medicine for which he does not possess any valid degree.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

