

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1334 of 2017

Arising out of Araria PS.Case No. – 33 of 2015 Thana – Araria, District- Araria

- =====
1. Brajesh Kumar Yadav, S/o Late Ramesh Chandra Yadav,
 2. Kiran Devi, W/o Brajesh Kumar Yadav, Both resident of Village-
Krishnapuri Maranga East, P.S.- K. Hat, District- Purnea.

.... Petitioners

Versus

1. The State of Bihar.
2. The Collector, Purnea.
3. The Sub Divisional Officer, Purnea.
4. The Circle Officer, Purnea East, Purnea.
5. The Superintendent of Police, Economic Offences Unit, Bihar,
Patna.
6. The Police Inspector-cum-Investigating Officer, Economic Offences
Unit, Bihar, Patna.

.... Respondents

=====

Appearance :

For the Petitioners	:	Mr. P.K. Shahi, Sr. Advocate Mr. Shankar Kumar Thakur, Advocate
For the Respondent	:	Mr. V.N.P. Sinha, Sr. Advocate Ms. Soni Srivastava, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date: 24-01-2018

Heard the parties.

2. This Criminal Writ Application has been filed for quashing of the order as contained in Memo No. 133 dated 16.01.2017 (Annexure-9) whereby the Collector, Purnea (respondent no. 2) has on the request of the Inspector of Police cum Investigating Officer, Economic Offence Unit (hereinafter referred to as the "E.O.U.") (respondent no. 6)



deputed a Magistrate for the purpose of seizure of the immovable property of the present petitioners and thereupon the concerned authorities have in compliance of the direction seized the immovable properties of the present petitioners. The petitioners have also prayed for release of the properties which are fully described in Annexure-9 to the present application.

3. A perusal of the order, as contained in memo no. 133 dated 16.01.2017, issued by respondent no. 2, would show that the Inspector of Police cum Investigating Officer, EOU, Patna wrote a letter no. 4226 dated 19.07.2016 (Annexure-6 to the present application) in connection with Araria P.S. Case No. 33/2015 dated 21.01.2015 under Sections 406/409/420/120(B)/34 of the Indian Penal Code. The letter has been written by the Investigating Officer in exercise of his power said to have been conferred under Section 102 of the Code of Criminal Procedure for the seizure of any property, according to the Investigating Officer, the immovable properties in this case are the properties acquired from the proceeds of ill-gotten money. It is stated that it is necessary to seize these properties during the investigation in accordance



with the provisions of Section 102 Cr.P.C. The District Magistrate, Purnea was requested to appoint a Magistrate and to direct the Anchala Adhikari, Sadar, Purnea to cooperate in the seizure and should take possession of the seized land. He also requested that the land mentioned in the letter may be demarcated by the Anchal Amin.

4. Learned senior counsel representing the petitioners has raised a question mark on the authority of the Inspector cum Investigating Officer, as according to him, the Police Officer, in the present case, has no power to seize/attach immovable property under Section 102(1) Cr.P.C.

5. Learned senior counsel submits that a co-ordinate Bench of this Court had occasion to consider the scope and ambit of section 102 Cr.P.C. in the case of ***Brajesh Kumar Srivastava Vs. State of Bihar*** reported in ***2016(3) PLJR 464***. It is his submission that the whole allegation against the petitioner in the present case is that he was the master-mind behind the alleged misappropriation of the crores of rupees, but so far as the present petitioners are concerned, they were not the proprietors of the Firm or the business entity who had procured the paddy from the three different districts on



pretext of providing the rice.

6. The emphasis in the whole argument is on that irrespective of the merit of the allegations, presently the exercise of power by the Investigating Officer in the matter of seizure/attachment of the immovable properties belonging to the present petitioners is without any basis and has no sanction of law.

7. Learned senior counsel submits that sub-section 3 of Section 102 Cr.P.C. clearly stipulates that the properties which is seized under sub-section 1 of Section 102 Cr.P.C. has necessarily to be such as is capable of being transported or produced before the Court. Only in case where the property is capable of being transported but it is not convenient to do so that the custody thereof can be given to any person on his executing bond undertaking to produce the property before the court as and when required. It is his submission that the immovable property is incapable of being produced before the court, thus the immovable property cannot be seized under Section 102 Cr.P.C. as the 'property' envisaged under Section 102 Cr.P.C. does not include 'immovable property'.



8. Extending the argument, it is further submitted that Section 102 Cr.P.C. confers power upon the Investigating Officer only to seize the property but he cannot request any other authority to make order of seizure of the property. Seizure, according to learned counsel, means taking over of actual physical possession of immovable property because the word 'attachment' is specifically/statutorily used for immovable property under different sections of the Code of Criminal Procedure. The word 'attachment' has not been used anywhere in Section 102 Cr.P.C., therefore, according to learned counsel, the legislature had no intention to include the immovable property in the said section, and therefore, in the instant case, the order of seizure made by respondent no. 2 on the request of respondent no. 6 is without authority of law.

9. On the other hand, learned senior counsel representing the E.O.U. submits that police has power to seize any property. Reliance in this regard has also been placed on the judgment of Hon'ble Supreme Court in the case of ***State of Maharashtra Vs. Tapas D. Neogy*** reported in ***1999(7) SCC 685***. In the said case, the Hon'ble Supreme Court dealt with a question, as to whether a police officer investigating into an



offence can issue prohibitory order in respect of the bank account of the accused in exercise of power under Section 102 Cr.P.C. The Hon'ble Apex Court took notice of the divergent views of different Hon'ble High Courts and was persuaded to take a view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 Cr.P.C. and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of an offence for which the police officer is investigating into.

10. Learned senior counsel representing the E.O.U. has also relied upon a co-ordinate Bench order dated 16.03.2016 passed in Cr.W.J.C. No. 23/2016. In the said case the Sub-Divisional Officer, Buxar had passed an order of attachment of the land of the petitioner and had appointed Circle Officer at Buxar as a receiver of the property. The order was challenged before this Court, and the short argument, which was raised before the Court, was that any executive authority has no jurisdiction to pass order of attachment of the land. The submission of the respondent-State was that the land has been attached in exercise of power under Section 102



Cr.P.C. and such land has been attached in pursuance of the request of the Investigating Officer of the Economic Offence Wing, Patna. The argument on behalf of the respondents were rejected with an observation that the power under Section 102 Cr.P.C. is to be exercised by any Police Officer and not by any executive authority or District Magistrate. The impugned order in the said writ application was quashed.

11. Learned senior counsel relies upon the observation of the learned co-ordinate Bench of this Court that the power under Section 102 Cr.P.C. is a power to be exercised by any Police Officer.

12. I have heard learned senior counsel for the parties and perused the records. The power of a police officer to seize the properties as envisaged under Section 102 Cr.P.C. is not in question. The issue raised in the present case is as to whether a police officer can direct seizure/attachment of an immovable property. A co-ordinate Bench of this Court in the case of ***Brajesh Kumar Srivastava (Supra)*** had the same issue fallen for consideration. The learned co-ordinate Bench of this Court discussed the Full Bench judgment of the Hon'ble Bombay High Court in the case of ***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 reported in **2011 (1) Bom. C.R. (Cri.) 326**; and after taking note of the distinction made by the Full Bench of the Hon'ble Bombay High Court in the matter of ***Sudhir Basant Karnataki (supra)*** with that of the judgment rendered by the Hon'ble Supreme Court in the case of ***State of Maharashtra Vs. Tapas D. Neogy*** reported in **1999(7) SCC 685**; and, further after discussion of the judgment of the Hon'ble Apex Court in the case of ***M.T. Enrica Lexie Vs. Doramma & Ors.*** reported in **(2012) 6 SCC 760** concluded in paragraph 41 as under:

*"41. Keeping in mind the ambit and scope of Section 102 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 immovable 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.”

13. So far as the reliance placed by learned senior counsel on the observation of the learned co-ordinate Bench of this Court in Cr.W.J.C. No. 33/2016 is concerned, there is no quarrel with the propositions that the power under Section 102 Cr.P.C. is a power to be exercised by any police officer and not by any executive authority or District Magistrate. The co-ordinate Bench in Cr.W.J.C. No. 33/2016 was neither addressed on the point as to whether police has power to attach the immoveable property nor the learned Judge has answered on this point.

14. From a reading of Section 102 Cr.P.C. and a judicial pronouncement on the subject, I am in agreement with the reasoning and rationale of the judgment of this Court in the case of ***Brajesh Kumar Srivastava (supra)***. The writ application is therefore required to be allowed by setting aside the impugned orders and consequential action and is accordingly allowed.

15. To me, it appears that the Code of Criminal



Procedure contains specific provisions for attachment of the properties acquired from proceeds of crime. The power conferred upon the regular courts and officers' in-charge of investigation and the manner in which such powers are to be exercised should be in accordance with the Code. Since this court has not been called upon to discuss such powers and provisions in that regard and both parties have argued only with reference to the power of police under Section 102 Cr.P.C., I am not extending the discussions for the present.

16. In case, the investigating officer has got materials to form a reasonable belief that the immoveable properties have been acquired from ill-gotten money and are required to be saved/protected from being alienated during pendency of the case, he will have liberty to take appropriate steps in accordance with law.

17. The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	19.01.2018
Uploading Date	24.01.2018
Transmission Date	24.01.2018

