

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.490 of 2018Order reserved on: 11-7-2018Order delivered on: 18-7-2018

Sayyed Ikbal Bakshi, S/o Late Anwar Bakshi, aged about 44 years, R/o Ganesh Nagar, Chuchuhiyapara, Tahsil and District Bilaspur (C.G.), The President Madarsa Rijaviya Anvarul Uloom, Ganesh Nagar, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Collector/District Magistrate, Bilaspur, District Bilaspur (C.G.)
3. Superintendent of Police, Bilaspur, District Bilaspur (C.G.)
4. Station House Officer, Police Station Sirgitti, District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mrs. Hamida Siddiqui, Advocate.

For Respondents/State: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Madarsa Razviya Anwarool Uloom Samiti, Ganesh Nagar, is a registered society under the Chhattisgarh Society Registrickaran Adhiniyam, 1973 and running Madarsa at Ganesh Nagar, Bilaspur. The petitioner claiming to be Chairman of the Managing Committee of the said Samiti has filed the instant writ petition questioning the order dated 3-1-2018 passed by the Collector-cum-District Magistrate, Bilaspur by which the petitioner's application for unlocking the lock made by the Station House Officer, Police Station Sirgitti and further opening the seal in one room at the first floor (room No.1), has been rejected by the said authority.
2. Mrs. Hamida Siddiqui, learned counsel appearing for the petitioner,

would submit that the order passed by the Collector-cum-District Magistrate is unsustainable and bad in law. She would further submit that though offence under Sections 366 and 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act has been registered against one of the teachers of the Madarsa and he has been arrested also and charge-sheet is pending consideration before the jurisdictional court, but neither the Madarsa nor the room has been seized by the Station House Officer and even the entire Madarsa premises have been locked on the ground of law and order situation. The petitioner has fundamental right to run the Madarsa and as such merely on the ground that there is likely to be law and order situation, the Madarsa premises as well as room cannot be kept sealed for a long time which is unsustainable and bad in law. She would rely upon a decision of this Court in the matter of Nisar Hussain v. State of Chhattisgarh and others {W.P.(C)No.1559/2018}, decided on 6-7-2018.

3. Mr. Arun Sao, learned Deputy Advocate General appearing on behalf of the State/respondents, on the strength of the affidavit filed by the Superintendent of Police, Bilaspur, would submit that offence has been registered against the school teacher and he is being prosecuted and same is pending consideration. He would further submit that in a dispute between the Muslim community and the petitioner, FIR under Crime No.199/2016 for the offence punishable under Sections 294, 336 and 506 read with Section 34 of the IPC has also been registered. During the course of investigation, the room where the place of incident is alleged to have taken place has been sealed as on the said place heinous offence was committed by the teacher of the Madarsa and key of the said room has been handed-over to the Sadar of

Masjid namely Saiyyad Mohd. Shah which was not being used as classroom. The petitioner's application under Section 133 of the CrPC has been rejected by the Sub Divisional Magistrate, Bilaspur by order dated 21-11-2016, therefore, a civil suit has been preferred by the petitioner herein in which interim injunction was granted in his favour and miscellaneous appeal was allowed. Thereafter, in the writ petition preferred by the petitioner before this Court namely W.P.(Art. 227) No.154/2017 liberty was granted to the petitioner to withdraw the suit and thereafter, the suit has been withdrawn. Therefore, the writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. The question for consideration would be, whether in exercise of power under Section 102 of the CrPC, the police officer is empowered to seal the premises of the petitioner (immovable property of the petitioner)?
6. In order to appreciate the point in dispute, Section 102 of the CrPC is extracted herein-below: -

“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 (7) 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.“

7. The Supreme Court in the matter of **M.T. Enrica Lexie and another v. Doramma and others**¹ indicated the kinds of property liable to be seized under Section 102 of the CrPC by holding as under: -

“14. The police officer in course of investigation can seize any property under Section 102 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 Code, the police officer can seize such property which is covered by Section 102(1) and no other.”

8. The Rajasthan High Court in the matter of **Amrit Lal Kumawat and others v. The State of Rajasthan and another**² has clearly held that in an investigation of case, police has no power to seize disputed immovable property either under Section 102 of the CrPC or pass order for disposal of property under Section 451 of the CrPC. It was observed as under: -

“11. So far as the right of the police to take property in its custody is concerned, [Section 102](#) of the Criminal Procedure Code empowers the police officer to seize certain properties. Sub-section (1) of [Section 102](#) 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. Sub-section (2) of [Section 102](#) provides that such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer. Sub-section (3) of [Section 102](#)

1 (2012) 6 SCC 760

2 1998 Cri.L.J. 3032

provides that 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 as it cannot be conveniently transported to the Court, 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.

12. On a careful reading of [Section 102](#) of the Criminal Procedure Code, it is difficult to hold that this section empowers a police officer to seize immovable property like plots of land, residential houses, mountains, rivers streets or similar properties. There are several reasons for arriving at the aforesaid conclusion. The first is that no useful purpose is going to be served by the seizure of the immovable property of the above kind so far as the object of investigation is concerned. Therefore, it cannot be inferred that for the purpose of facilitating investigation, inquiry or trial seizure of immovable property of above kind is permissible. So far as the title to immovable property is concerned it is the competent civil Court or revenue Court which is empowered by law to adjudicate the disputed questions relating to title. The investigation by the police has nothing to do with the disputes relating to title to any immovable property. So far as the possession of immovable property is concerned, in case of dispute, the Executive Magistrate may take appropriate action under [Sections 145](#) and [146](#) of the Criminal Procedure Code, if the conditions laid down for exercise of power under [Section 146\(1\)](#) of the Criminal Procedure Code are satisfied. The Executive Magistrate may attach the disputed property subject to the provisions of that Section. Seizure by the police of immovable properties, even if there is a dispute about the possession thereof, cannot be inferred in view of the provisions of [Sections 145](#) and [146](#) of the Criminal Procedure Code. The rule that if there are special provisions in the statute to deal with a certain matter then the general provisions do not apply to that matter, is applicable in the case. Therefore, even if there are disputes about immovable property, and attachment of the property is necessary for preventing the breach, of peace it is the Executive Magistrate who is specially empowered under [Sections 145](#) and [146](#) of the Criminal Procedure Code to pass suitable orders for attachment. The power of police to seize immovable property, in cases in which there is a dispute about the possession cannot, therefore, be inferred from provisions of [Section 102](#) of the Criminal Procedure Code.”

9. In the above-stated judgment, it has been held that immovable property like lands, houses, mountains, rivers, roads and similar properties cannot be seized by police officer under Section 102 of the CrPC nor the Magistrate can pass any order under Section 451 of the

CrPC in respect of such properties.

10. In the matter of Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood through its Power of Attorney Holder Mr. Rajesh Baxi Chetna Properties Pvt. Ltd. v. The State of Maharashtra³, a Full Bench of the Bombay High Court held that a police officer in exercise of power under Section 102 of the CrPC cannot attach immovable property and 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.”

11. The said Full Bench judgment of the Bombay High Court has been followed with approval by the Patna High Court in the matter of Brajesh Kumar Srivastava v. The State of Bihar⁴ holding that the police officer has no power to seal the immovable property and the word seize under Section 102 of the CrPC would mean only actual taking possession of movable property.
12. Not only this, the Jharkhand High Court in the matter of Bishwanath Paul v. State of Jharkhand⁵ also struck the similar proposition and held that for the purpose of facilitating the investigation, the police under Section 102 of the CrPC has no power to put seal on the

³ MANU/MH/1561/2010

⁴ 2016 SCC OnLine Pat 2900

⁵ 2016 JLJR (1) 443

immovable property.

13. 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), 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 movable property. I find myself in complete agreement with the ratio laid down by the Full Bench of the Bombay High Court in the aforementioned decision with regard to the powers of the police officer to attach immovable property under Section 102(1) of the CrPC.
14. Reverting to the facts of the present case, it is quite vivid that in the room of the Madarsa an offence is said to have been committed under Section 376 of the IPC by one of the staff of the said institution and after investigation, the said room as well as Madarsa has been locked/sealed. It is stated at the Bar that neither the Madarsa nor that room where the offence is said to have been committed was seized by the jurisdictional police obviously for the reason that the police has no such power under Section 102 of the CrPC to seal/lock such premises and also for the reason that such a seizure has not been informed to the Magistrate having jurisdiction.
15. Following the principles of law laid down in **Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood** (supra) and **Amrit Lal Kumawat** (supra), it cannot be held that the police officer has any such power to seal the immovable property of the petitioner. Accordingly, the Station House Officer, Police Station Sirgitti is

directed to remove the seal on the immovable property of the petitioner and vacate the premises of the petitioner after making inventory of the articles which are lying on the said premises. The said exercise shall be done within ten days from the date of receipt of a copy of this order. The petitioner will be entitled for vacant possession of the said premises.

16. It is made clear that this Court has not expressed any opinion on the matter so far as seizure of material and other articles is concerned.
17. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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