

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1559 of 2018

Nisar Hussain, S/o Shri Sadiq Hussain, aged about 33 years, Proprietor, Nisar Traders, Maharana Pratap Chjowk, In front of Ambika Trading, Bilaspur and R/o Main Road, Bhartiya Nagar, Bilaspur, Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Home, Capital Complex, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Superintendent of Police, District Bilaspur.
3. The Additional Superintendent of Police, District Bilaspur.
4. The Station House Officer, Police Station Chakarbhata, District Bilaspur.

---- Respondents

For Petitioner: Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.
 For Respondents/State: Mr. Ratan Pusty, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/07/2018

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner herein stating inter alia that the petitioner is a scrap dealer running his business in the name and style of Nisar Traders and his shop situated at Hirri Mines, Parsada, District Bilaspur has been locked and sealed by respondent No.4 without jurisdiction and without authority of law, it may be directed to be unsealed by issuance of appropriate writ or direction.
2. This Court has directed the State to file affidavit on 5-7-2018 and

affidavit has been filed by the State relying upon the provisions contained in Section 102 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') stating inter alia that shop of the petitioner has been sealed for the reason that the properties stored in the shop in relation to which there existed suspicion of some cognizable offence having been committed in relation thereto, could not be conveniently transported to some other place or because of the difficulties in securing proper accommodation for the custody thereof. The petitioner has suppressed the fact that he has been served with notice under Section 91 of the CrPC.

3. Mr. B.P. Sharma, learned counsel appearing for the petitioner, submits that under Section 102 of the CrPC, immovable property cannot be sealed by the Station House Officer in exercise of power under Section 102 as such, the order of sealing is without jurisdiction and without authority of law.
4. Mr. Ratan Pusty, learned Government Advocate appearing for the State/respondents, submits that since the property kept in the shop in question to which there is apprehension of having been committed cognizable offence, could not be conveniently transported to some other place, therefore, the shop itself has been seized.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and gone through the record with utmost circumspection.
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 question for consideration would be, whether in exercise of power under Section 102 of the CrPC, the police officer is empowered to seal the shop of the petitioner (immovable property of the petitioner)?
8. 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 Maharashtra¹, a Full Bench of the Bombay High Court held that a police officer in exercise of power under Section 102 of the CrPC

¹ MANU/MH/1561/2010

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.”

9. 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 Bihar**² 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.
10. Not only this, the Jharkhand High Court in the matter of **Bishwanath Paul v. State of Jharkhand**³ 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 immovable property.
11. 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**

2 2016 SCC OnLine Pat 2900

3 2016 JLJR (1) 443

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.

12. Reverting to the facts of the present case, it is quite vivid that, in the present case, in exercise of power under Section 102 of the CrPC, the police has seized three trucks of iron angles and other objects weighing about 40 tonnes and has given the same to the possession of the employees of the petitioner, but thereafter, proceeded to seal the shop/immovable property held/owned by the petitioner. Following the principles of law laid down in Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood (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 Chakarbhata 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 shop. The said officer is also directed to make provision for keeping of the articles so seized for its production before the court as and when required. 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.

13. 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.

14. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1559 of 2018

Nisar Hussain

Versus

State of Chhattisgarh and others

Head Note

Station House Officer of a police station has no power and jurisdiction to seal the immovable property of a citizen.

किसी थानेदार के पास किसी नागरिक की अचल सम्पत्ति सील करने की शक्ति तथा क्षेत्राधिकार नहीं है।