

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3061 of 2018

Arising Out of PS. Case No.-607 Year-2017 Thana- SAHARSA District- Saharsa

Manoj Kumar Yadav Son of Rajendra Prasad Yadav, Resident of Mohalla-
Refugee Colony, Uchhahi Nagar, Ward No.05, P.O.- Saharsa, P.S.- Saharsa,
District- Saharsa.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Patna.
2. The District Magistrate, Saharsa.
3. The Superintendent of Police, Saharsa.
4. The Sub-Divisional Officer, Sadar Saharsa.
5. The Sub-Divisional Police Officer, Sadar Saharsa.
6. The Circle Officer, Kahara, District- Saharsa.
7. The S.H.O. Saharsa Sadar P.S., District- Saharsa.
8. The Executive Engineer, Building Construction Division, Saharsa.
9. The Assistant Engineer, Building Construction Division, Saharsa.
10. The Junior Engineer, Building Construction Division, Saharsa.

... .. Respondents

Appearance :

For the Petitioner : Dr. Mankeshwar Tiwari, Advocate
For the Respondents-State: Mr. Uday Shankar Saran Singh, GP-19

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 21-08-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the respondents to unseal the shops of the petitioner, which have been sealed on the instruction of the Sub-divisional Officer, Saharsa, Sadar on 17.06.2017 pursuant to institution of Saharsa Sadar P.S. Case No.607 of 2017 dated 17.06.2017 against his tenant Dilip Kumar Raja @ Pappu.



2. Learned counsel appearing for the petitioner submitted that on 16.06.2017, an inspecting team headed by the Sub-divisional Officer, Saharsa, Sadar raided the rented shops of one Dilip Kumar Raja @ Pappu situated at Refugee Colony, Saharsa wherein business of cement sale was conducted in the name of Harsh Enterprises. On inspection, it was found that the shop owner Dilip Kumar Raja had been mixing expired cement in new bags of cement. Accordingly, Saharsa Sadar P.S. Case No.607 of 2017 dated 17.06.2017 was registered against Dilip Kumar Raja and others. A search-cum-seizure list was prepared and the shops were sealed. He submitted that petitioner has not made an accused in the case. The named accused Dilip Kumar Raja, a tenant in the house of the petitioner has already been released on bail. However, the shops have not been unsealed till date.

3. A counter affidavit has been filed on behalf of the respondent no.3 wherein it is stated that since the petitioner had given the two shops on rent from where illegal activities were being carried, the Sub-divisional Officer, Saharsa, Sadar sealed the godown and arrested the accused persons. In another counter affidavit filed on behalf of respondent no.8 to 10, it is stated that the Building Construction Department is only a formal party in the case and the Assistant Engineer, Building Construction



Department being member of inspection-cum-raiding team in leadership of the SDO, presented written report of the factual situation present at the spot to the SHO, Sharasa Police Station, who had also come to the spot.

4. Learned counsel for the State submitted that on the basis of written report of Niresh Aditya, the then Assistant Engineer, Building Construction Department, Saharsa, the FIR was registered under Sections 419, 420, 467, 468, 469, 475, 476, 482, 483 and 486 read with 34 of the Indian Penal Code wherein he has stated invariably that an inspecting team was constituted by the Sub-divisional Officer, Saharsa for inspection of the shops belonging to the petitioner Dilip Kumar Raja was doing business of adulterated cement from the shops in question. Thereafter, the team visited the cement godown of one Bipin Jha wherein also several articles used for adulteration of cement and replaced bags of adulterated cement were found. Under the circumstances, the premises of one Sudhir Jha and Nikhil Yadav were also raided and objectionable articles were recovered. Thereafter, the Sub-divisional Officer, Saharsa seized all the recovered items and sealed the godowns and shops and the accused persons were arrested. He has further contended that since the petitioner had given the two shops on rent, which were being misused for illegal



activities, there is no illegality in sealing of the premises of the petitioner. He contended that the shops have been sealed in presence of the Officer-in-charge of the concerned police station in exercise of powers conferred under Section 102 of the CrPC.

5. In reply, learned counsel for the petitioner submitted that the respondents have got no jurisdiction to seal the shops of the petitioner.

6. I have heard learned counsel for the parties.

7. Section 102 of the Code of Criminal Procedure (for short 'CrPC') defines the power of police officer to seize certain property specially where commission of an offence is alleged. The police officer may seize any property, which may alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. However, the police have no power to seal or seize an immovable property under Section 102 of the CrPC.

8. In this regard, it would be relevant to note that the question whether the police have power to seize immovable property under Section 102 of the CrPC came up for consideration before a Full Bench of the Bombay High Court.

9. In view of conflicting judgments of two Division Benches of the High Court, the matter was referred to the Full



Bench. The Full Bench of the Bombay High Court considered the matter in detail in *Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood through its Power of Attorney Holder Mr. Rajesh Baxi Chetna Properties Pvt. Ltd. v. The State of Maharastra* [MANU/MH/1561/2010MANU/MH/1561/2010], wherein, an elaborate analysis of the powers of the police under Section 102 CrPC was made.

10. The Bench gave a split judgment with the majority observing that police cannot attach immovable property under Section 102 of the CrPC. The reference made to the Bench was answered as under:--

"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. " (emphasis mine)



11. The Full Bench of the Bombay High Court refused to extend the law laid down by the Supreme Court in the **State of Maharashtra v. Tapas D. Neogy [(1999) 7 SCC 685]** to immovable properties in order to bring them within the purview of Section 102 CrPC.

12. In paragraph No. 66 of the judgment, it held as follows:-

"66. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring the offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and, eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A to 105-L of the Code and Section 68-C to F of the Narcotic Drugs and Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property."

13. Similar issue had arisen before the Kerala High Court in **Kuriachan Chacko v. State of Kerala** in [W.P.(C) No. 12275 of 2012 dated 26.7.2012] wherein it has been held



in paragraph 14 as under:--

"14. Section 102, by no stretch of imagination, can apply in a situation like this. Even though the words "any property" are there in Section 102, it is clear from a reading of sub-sections (1) to (3) together, that what is involved is not the seizure of immovable property. As already noticed, Section 83 contains a provision for attachment of immovable property and the power is conferred on the court itself. Under Section 102, the power of seizure is on the police officer and it has never envisaged a situation like the one herein, where a police officer can direct attachment of immovable property. Therefore, in the absence of a specific conferment of power on the Police Officer, the steps for attachment made by the Sub-Registrar herein, relying upon the request made by the Police Officer, cannot hold good. The said letter, even going by the wordings therein, cannot amount to an order of attachment also. Therefore, merely because there is a power for the Police Officer to conduct investigation and collect details of properties of the accused or others involved in that process, it can never be treated as an order of attachment for enabling the Sub-Registrar to put an endorsement in the registers." (emphasis mine)

14. In **M.T. Enrica Lexie & Anr. v. Doramma & Ors.**



[(2012) 6 SCC 760], the Supreme Court examined the provisions of Section 102 of the CrPC. In the said case, two Indian fishermen belonging to Kerala State were killed by firing emanating from an Italian vessel, M.T. Enrica Lexie which was en voyage from Singapore to Egypt and passing through the Arabian Sea. The vessel was intercepted and persons on board were brought to the coast by Kerala Police. Investigation revealed that firing was resorted to by two out of six Italian marines, who were responsible for protecting the vessel from pirates. The stand of the vessel owners was that the crew had no control over action of marines deputed by the Italian Government. The limited issue in that case was whether the vessel and the marine, against whom a criminal case was pending, could be allowed to leave India. The Single Judge of the High Court allowed the writ petition filed on behalf of the vessel and its owners. A Division Bench, however, reversed the decision by holding that the question regarding release of the vessel could be agitated before the Magistrate having necessary jurisdiction under Section 457 of the CrPC.

15. After hearing the parties, the Supreme Court observed in **M.T. Enrica Lexie (supra)** that the police officer in course of investigation can seize any property under Section



102 of the CrPC 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 CrPC, the police officer can seize such property which is covered by Section 102(1) of the CrPC and no other.

16. From the ratio laid down in the aforesaid decisions, it can safely be said that the police can not exercise its authority in attaching or sealing immovable properties in exercise of powers conferred under Section 102 of the CrPC.

17. In the instant case, the shops of the petitioner were sealed in connection with Saharsa Sadar P.S. Case No.607 of 2017 on 17.06.2017. The said shops are neither stolen property nor the object of crime. The petitioner being the owner of the shops is not involved in commission of any offence. He has not been made accused in the case. The shops are not the property, which is covered by Section 102(1) of the CrPC. Hence, sealing of the premises in exercise of power under Section 102(1) of the CrPC by the police is patently bad in the



eyes of law in view of the decisions discussed above.

18. Accordingly, the writ petition is allowed.

19. The respondents, specially the respondent nos. 2 to 7 are directed to unseal the shops of the petitioner forthwith.

20. Registry is directed to send a copy of the order to the respondent nos. 2 and 3 through Fax.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2019
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