

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP-17255-2019
Date of decision: 28.06.2019

Managium Juris LLP and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Munish Gulati, Advocate
for the petitioners.

Mr. Surinder Singh, AAG, Haryana.

Mr. Arvind Moudgil, Advocate
for respondent Nos. 5, 6, 10 and 11, Union of India.

Mr. Randeep Singh Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate
for the complainant-M/s Indiabulls.

ARVIND SINGH SANGWAN, J. (Oral)

The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a Writ in the nature of Mandamus directing the respondents to de-seal the offices of the petitioner's law firm; to grant protection to Dr. Kislay Panday as well as for issuance of directions to the respondents/police officials not to interfere with the life and liberty of the office bearers and staff of the petitioner's firm.

The arguments of learned senior counsel for the parties as well as learned State counsel and learned counsel, appearing of the respondents-UOI, have been heard at length.

During the course of arguments, learned State counsel, on instructions from the Investigating Officer SI Munesh, has submitted that FIR No. 0261 dated 04.06.2019 under Sections 384, 464, 465 and 506 of the IPC at Police Station Udyog Vihar, District Gurugarm was registered initially against Vishal Shekhar with the allegations of trying to extort Rs. 10 crore from the complainant. It is further submitted that prime accused Vikash Shekhar has already been arrested and he has made disclosure statements indicting Dr. Kislay Panday as a person on whose instance, he has committed the offence. It is further stated that even the statements of some witnesses, i.e. Poorva Popli, Advocate and Siddharth Yadav, Advocate, who are working in the petitioner's firm, have been recorded under Section 161 Cr.P.C. and similarly statement of one other witness, namely Abhay Yadav, has also been recorded during investigation, which indicts the aforesaid Dr. Kislay Panday as an accused.

Learned State counsel, on instructions from the Investigating Officer SI Munesh, further submits that Ram Mani Panday, father of Dr. Kislay Panday, stands arrested on 27.06.2019 from Lucknow, U.P. and the matter is under active investigation and even Dr. Kislay Panday has been nominated as an accused. It is further submitted that both of them are already accused in some other pending FIRs in Delhi.

Faced with this, learned senior counsel for the petitioners restricts his arguments limited to the extent that the office/premises of the petitioner's firm, which was sealed on 11.06.2019, after taking prior permission from the Illaqua Magistrate, be de-sealed as it is a law firm where the files/documents relating to other clients are also lying and the sealing of the premises has been done without following the proper

procedure prescribed under Section 102 Cr.P.C.

Learned senior counsel for the complainant has argued that there is sufficient evidence against Dr. Kislay Panday and, therefore, at this stage, the police be directed to complete the investigation in the FIR.

Learned counsel, appearing on behalf of UOI-respondent Nos. 5, 6, 10 and 11, submits that at this stage, he has instructions to say that the information with regard to allegations levelled in the petition is to be collected from concerned offices and only thereafter, some reply can be filed.

In order to decide the controversy regarding sealing of the premises of the petitioner's firm, it would be appropriate to refer to Section 102 Cr.P.C. and for the ready reference, the same is reproduced 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, 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.

Learned senior counsel for the petitioners has argued that the powers of a police officer under Section 102 Cr.P.C. are restricted and the Full Bench of Hon’ble Bombay High Court in *Sudhir Vasant Karnataki vs.*

State of Maharashtra and others, 2010 (13) RCR (Criminal) 587 has held as under:

“84. 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 "immoveable 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 immoveable property which may be found undercri.w.p.3198-2009 & Other Petitions.doc circumstances which create suspicion of the commission of any offence?

Ans. NO.

In the aforesaid judgment, Hon’ble Bombay High Court has followed the earlier judgment of Hon’ble Patna High rendered in ***Brajesh Kumar Srivastava vs. The State of Bihar, 2016 SCC (Online) Pat 2900***, wherein it has been held that a police officer has no power to seal any immovable property and the seizure under Section 102 Cr.P.C. would mean as taking the actual possession of the moveable property only.

In view of the same, it is apparent that the police, by exercising the powers under Section 102 Cr.P.C., has wrongly sealed the premises of the petitioner’s firm as in view of the judgment in ***Sudhir’s case (supra)***, it has been held that the police has no such power to seal the immovable property.

Therefore, the Investigating Officer/SHO are directed to remove the seal from the immovable property of the petitioner’s firm after preparing an inventory of the articles which are lying there and by doing the video recording of the same in the presence of petitioner No. 2 Anil Kumar, who is the Administrative Executive of the firm and if recovery of any

file/electronic items as evidence is required, it will be open for the Investigating Officer to recover the same.

The Investigating Officer is further directed that on 01.07.2019 at 10:00 AM, she will visit the premises and she is granted time to do the needful and complete the investigation in this regard by 05:00 PM on 02.07.2019 and thereafter, the premises will be de-sealed in the presence of petitioner No. 2 Anil Kumar.

It will be open for the Investigating Officer to take assistance of the Delhi Police for the said purpose.

It is made clear that anything observed herein shall have no bearing either with regard to averments made in the petition or the other relief sought by the petitioners and it will be open for the petitioners to avail of other remedies in accordance with law.

Petition stands disposed of accordingly.

28.06.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No