

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 990 of 2020**

Surendra Kumar Pandey, S/o. Late Kashiprasad Pandey,
aged about 67 years, R/o. Gram Urga, Tehsil and
District Korba (C.G.)

----- **Petitioner**

Versus

State of Chhattisgarh through : Police Station –
Urga, District – Korba (C.G.)

----- **Respondent**

For Petitioner : Mr. Anshul Tiwari, Advocate.
For Respondent : Mr. Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/12/2020

(1) The petitioner herein calls in question the legality, validity and correctness of the order dated 15.07.2020 passed by the First Additional Sessions Judge, Korba, by which the revision petition has been dismissed affirming the order of trial Magistrate dismissing the application for custody of the building and medical equipments seized by the police while investigating the offences against the petitioner under Sections 420 & 409 read with Section 34 of the Indian Penal Code.

(2) Mr. Anshul Tiwari, learned counsel appearing for the

petitioner would submit that the building, in which the petitioner's daughter was running Clinic, has been seized along with medical equipments kept therein finding that offence under Sections 420 & 409 read with Section 34 of the IPC has been committed by the petitioner whereas the police has no authority to seize immovable property in exercise of power under Section 102 of the Cr.P.C. He would also submit that medical equipments may also be released in light of decision rendered by the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of C.G.¹.

(3) On the other hand, counsel for the State/respondent opposes the application.

(4) I have heard learned counsel appearing for the parties and considered their submissions made hereinabove and went through the record with utmost circumspection.

(5) Undisputedly, petitioner's own building situated in Khasra No. 117/4, area 4 decimal has been seized and sealed by the respondent – Police for investigation relating to Crime No. 56/2020 for offence punishable under Sections 420 & 409 read with Section 34 of the Indian Penal Code and medical equipments also have been seized & sealed by the jurisdictional police.

¹ (2002) 10 SCC 283

(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 seize and seal the building/clinic of the petitioner ?

(8) The question, as to whether immovable property can be seized or not has been considered by their Lordships of the Supreme Court in the matter of **Nevada Properties Pvt. Ltd. v. State of Maharashtra**², in which resolving the dispute it has been categorically held that immovable property cannot be subject matter of seizure by the police in exercise of power under Section 102 (1) of the Cr.P.C.. Relevant paragraphs of the report states as under :-

“20. [Section 102](#) postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word ‘seize’ would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of [Section 102](#) of the Code does not support the interpretation that the

police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the Legislature conferring this express or implied power under [Section 102](#) of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure. Equally important, for the purpose of Criminal Appeal arising out of interpretation is the scope and object of [Section 102](#) of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. [Section 102](#) is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind [Section 102](#), use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court

vide [Sections 451 to 459](#) of the Code. The expression 'circumstances which create suspicion of the commission of any offence' in [Section 102](#) does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences. Criminal Appeal arising out of In case and if we allow the police officer to 'seize' immovable property on a mere 'suspicion of the commission of any offence', it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under [Section 102](#) of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in Civil

Courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side ([See Binod Kumar and Others v. State of Bihar and Another](#)¹⁴). Thus, it will not be proper to hold that [Section 102](#) of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial. As far as possession of the immovable (2014) 10 SCC 663 Criminal Appeal arising out of property is concerned, specific provisions in the form of [Sections 145](#) and [146](#) of the Code can be invoked as per and in accordance with law. [Section 102](#) of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the Criminal Court during trial. This, however, would not bar or prohibit the police officer from seizing documents/ papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal

possession and title of the property must be adjudicated upon by a Civil Court."

21. In view of the aforesaid discussion, the Reference is answered by holding that the power of a police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property.

Thus, Their Lordships have clearly held that in exercise of power under Section 102 (1) of the Cr.P.C., police officer cannot attach, seize and seal an immovable property whereas in the instant case, police officer has seized and sealed the Clinic / Building owned by the petitioner, which he is not empowered to seize and seal as held by their Lordships in the matter of Nevada Properties Pvt. Ltd. (supra), the petitioner is entitled for vacant possession of the immovable property i.e. hospital / clinic seized and sealed by the police. As such, seizure of the petitioner's building/Clinic by the police for investigation of the offence under Sections 420 & 409 read with Section 34 of the Indian Penal Code is clearly unauthorized in light of the principles of law laid down by the Supreme Court in above-cited judgment.

(10) The petitioner also sought interim custody of the medical equipments seized from the Hospital / Clinic. In that regard the judgment of the Supreme Court in the matter of Sunderbhai Ambalal Desai (supra) may be noticed herein. Their Lordships of the Supreme Court in the matter of Sunderbhai Ambalal Desai (supra), has clearly held that under Section 451 of the Cr.P.C. it should be exercised expeditiously and judiciously and owner of article should not suffer because of its remaining unused or by its misappropriation and court or the police are required to keep the articles in safe custody and jurisdiction of Court should be exercised properly in this regard. In light of the aforesaid judgments of the Supreme Court, the impugned order passed by the trial Magistrate duly affirmed by the revisional Court is set aside and it is directed that Concerned Police Station will remove seal of the Hospital building owned by the petitioner and will deliver possession of the same to the petitioner / owner of the hospital after preparing inventory / panchnama / details of the property. The petitioner should give an undertaking that he will allow the inspection, if any, required for investigation of the offence at any point of time during trial. The petitioner will submit attested copy of title deed of the property in dispute to the Investigating Officer. Likewise, the

trial Magistrate will give interim custody of the said medical equipments of the petitioner after imposing reasonable conditions for production in the court during trial and if necessary photograph of the medical equipments will be done within 10 days from the date of receipt of certified copy of this order.

(11) Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

