

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 1031 of 2020

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C. seeking to quash the proceedings in Crime No.81 of 2017 of Kuravi Police Station, Mahabubabad District, which was registered for the offences punishable under Sections 417, 420, 313 of I.P.C., Section 22 read with Section 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the Act"), Section 5 of the Medical Termination of Pregnancy Act, 1971, Section 15 (3) of the Indian Medical Council Act, 1956, Section 41 read with 23 of the Juvenile Justice Care Protection of Child Act, 2000.

The case of the prosecution is that the Deputy District Medical and Health Officer, Mahabubabad, gave a report, dated 06.06.2017 to the Station House Officer, Kuravi Police Station, *inter alia*, stating therein that he received a reliable information that the petitioner/accused is running Swathi Nursing Home at Kuravi, having Ultrasound Scanning Machine and doing illegal abortions in his nursing home. It is further stated in the report that on inspection, it is noticed that

the nursing home was not registered under Allopathic Private Medical Care Establishment Act and there was no permission to run Ultra Sound Scan Machine, as required under the Act; that the petitioner/accused is doing sex determinations and illegal abortions and on the date of incident, the following patients were found in the nursing home.

1. Smt. Chanda Lasya Priya, W/o. Ashok Kumar, 26 years, Female, Padmashali, R/o. Girinibavi of Duggondi Mandal, was undergone T.P. (Abortion) on 05.06.2017, indication IUGR by Dr.R.Sreenivas (petitioner).
2. Smt. Guguloth Sharada, W/o. Balaji, 25 years, Female, Caste: ST, R/o. Narayanapuram, Kesamudram Mandal, was undergone abortion 6 days back (having previous 02 female children).
3. Smt. Banoth Swathi, W/o. Gopi, 25 years, female, caste: S.T., r/o. Nelakondapally of Khammam District, admitted on 05.06.2017 having one live female child, 2nd pregnancy with female foetus planning for MTP by Dr.R.Srinivas (Petitioner)
4. Smt. Ajmeera Sunitha, W/o. Veeranna, Age: 25 years, Female, R/o. Nallela Village, Kuravi Mandal, having two female live children came for ultra sound scan by Dr.R.Sreenivas (petitioner).

Basing on the said report, the police registered the above crime and during the course of investigation, the Inspector of

Police examined the witnesses and seized the ultra sound scanning machine under a cover of panchanama. The police officials put a lock and seal to the ground floor of the nursing home, thereby preventing the petitioner/accused to make use of the ground floor of the building.

Heard learned Counsel appearing for the petitioner/accused and the Additional Public Prosecutor for respondent-State.

Learned Counsel appearing for the petitioner/accused would submit that the petitioner/accused has not committed any offence. The petitioner/accused gave lease of the ground floor to Dr.V.Vasumathi Reddy, for running Swetha Nursing Home, Kuravi. The doctor obtained certificate of registration of Allopathic Private Medical Care Establishment from District Registrar, Warangal, for a period of three years commencing from 26.06.2010 to 25.06.2015 and thereafter the nursing could not run in the said premises as the permission to run the nursing home stood expired. He further submits that the police at the behest of some of the doctors, who had eyesore on the practice of the petitioner/accused, inspected the nursing home and registered a false case. The petitioner/accused was arrested and released on bail. The petitioner/accused had submitted an

application, dated 17.08.2017, before the District Medical and Health Officer, Mahabubabad, requesting to remove the seal of the ground floor of the building, who in turn advised him to approach the Court. It is also submitted that the petitioner/accused filed CrI.M.P.No.24 of 2018 before the Additional Judicial First Class Magistrate, Mahabubabad, seeking interim custody. By an order, dated 12.04.2018, the learned Magistrate dismissed the said application on the ground that the investigation is pending and charge sheet is not filed. He further submits that the case in the above crime is still under investigation and the police have no power to seize/attach immovable property under Section 102(1) Cr.P.C. The police officials un-authorisedly put a lock of the building, where valuable articles and also teak wood stored in the ground floor of the building. In support of his contention, he relied on judgment of the Apex Court in *Nevada Properties Private Limited through its Directors v. State of Maharashtra and another (Criminal Appeal No.1481 of 2019)*.

Learned Additional Public Prosecutor opposed the application.

Before proceeding further it would be useful to refer to Section 102 of Cr.P.C., which reads as under:

"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 (1) 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."

The power of a police officer to seize the properties as envisaged under Section 102 Cr.P.C. is not in question. The question for consideration would be, whether in exercise of

power under Section 102 of the Cr.P.C., the police officer is empowered to seal the premises of the petitioner (immovable property of the petitioner)?

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 Cr.P.C. 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."

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

¹ (2012) 6 SCC 760

² 1998 Cr.L.J. 3032

"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 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."

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.

In the instant case the ground floor of the building bearing No.5-108 situated at Kuravi village and Mandal, Mahabubabad District was put under lock and seal by the police stating that the petitioner has been conducting sex determination tests and causing miscarriages by running a nursing home in the said building.

Keeping in mind the ambit and scope of Section 102 of Cr.P.C., and following the principles of law laid down in *Amrit Lal Kumawat (supra)*, it cannot be held that the police officer has any such power to seal the immovable property of the petitioner/accused. Accordingly, it is a fit case to direct the concerned Station House Officer to remove the lock and seal of the immovable property of the petitioner/accused.

With regard to quashing of the proceedings in the above crime is concerned, after considering the various decisions including the decision of **State of Haryana v. Bhajan Lal Case**³, I am of the view that there can be no interference with the investigation unless cognizable offence is not *ex-facie* discernable from the allegations contained in the FIR or there is any statutory restriction operating on the power of the police to investigate a case. From a perusal of the FIR, *prima facie*, it

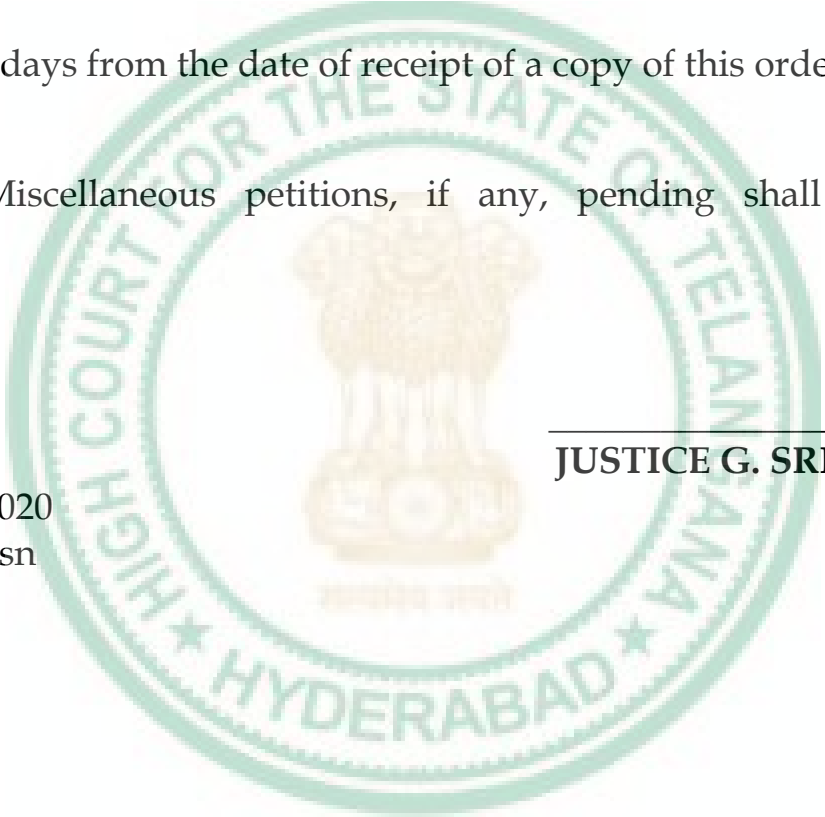
³ 1992 SCC (CrI.) 426

cannot be said that no cognizable offence is made out. Hence, no ground exists for quashing of the FIR.

Accordingly, the Criminal Petition is disposed of, directing the Station House Officer, Kuravi Police Station, to remove the lock and seal of the ground floor of the building of the petitioner/accused bearing No.5-108 situated at Kuravi village and Mandal, Mahabubabad District, within a period of fifteen days from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending shall stand closed.

20.02.2020
gkv/Gsn


JUSTICE G. SRI DEVI

