

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.2199 of 2019

ORDER:

This Criminal Petition is filed, under Section 482 of Cr.P.C., seeking a direction to the Commissioner and Inspector General, Registration and Stamps, Hyderabad, to defreeze the property covered under document No.9374/2017 dated 16.12.2017 shown at Sl.No.2 in the list of properties.

Brief facts of the case are that on a written complaint filed by the Commercial Tax Officer, Bodhan Circle, Nizamabad District, the Inspector of Police, Bodhan Police Station, registered a case in Crime No.52 of 2017 against one S.L.Shiva Raj (A-1), S.V.Sunil (A-2), Hanuman Singh (A-3), Venugopal Swamy (A-4) and R.D.Vijaya Krishna (A-5) for the offences punishable under Sections 406, 420, 468 read with Section 34 of I.P.C. It is alleged that A-1 is a Tax Consultant and A-2 is the son of A-1 and they are the main persons involved in the scam of bogus challans with the active connivance of some of the officials of Bodhan Circle. It is further alleged that the accused created forged challans on behalf of the dealers who had to pay their taxes and conveniently mixed them along with the genuine challans and credited to the other dealers who resorted to fraudulent means to avoid payment of tax. Subsequently, they managed the staff of Commercial Tax Office, Bodhan Circle and entered the full amount to the genuine dealer and also payment to the fraudulent

dealers, thereby caused huge loss to the State exchequer. They also used to append the stamps of the Office of Commercial Tax Office, Treasury Office and the State Bank of Hyderabad along with the signatures. They also created forged challans without actual payment by the concerned dealers and cheated the Government. Thereafter, the case has been transferred to C.I.D., Hyderabad and the same is pending investigation.

While the things stood thus, the Superintendent of Police, C.I.D., filed CrI.M.P.No.908 of 2018 before the Additional Judicial Magistrate of First Class, Nizamabad, seeking a direction to the Commissioner and Inspector General, Registration and Stamps, Hyderabad, to freeze further registrations on the immovable properties belonging to A-1 and A-2. By order, dated 19.05.2018, the learned Magistrate allowed the said petition and addressed a letter, on 21.05.2018, to Commissioner and Inspector General, Registration and Stamps, Hyderabad, directing him to freeze further registrations on the immovable properties belonging to A-1, his wife S.Suryakala and his son (A-2) for the purpose of further investigation.

It is the case of the petitioner that he has purchased a house belonging to A-1 and his wife S.Suryakala under a registered sale deed bearing document No.9374 of 2017, dated 16.12.2017 for a valuable consideration and he has been in peaceful possession and enjoyment of the same. Thereafter, the petitioner obtained a loan of Rs.1.00 Crore from Andhra Bank, Hyderabad, and mortgaged the

said property. Subsequently, having come to know about the passing of the aforesaid order, the petitioner filed CrI.M.P.No.1830 of 2018 in Crime No.52 of 2017, seeking a direction to the Commissioner and Inspector General, Registration and Stamps, Hyderabad, to delete the property bearing M.No.5-4-38, situated at Dwarakanagar, Nizamabad, which is shown as Sl.No.2 in the list of properties and also covered by document No.9374 of 2017. It is submitted that A-1 has nothing to do with the said property as it was purchased by the wife of A-1 under a registered document No.2851/1995 dated 12.05.1995, with her Streedhana. It is further submitted that since the vendors of the petitioner have acquired the said property in the year 1995, the same is nothing to do with the above crime.

The respondent/complainant filed counter stating that the petition is not maintainable under law as the petitioner prays the Court to sit in appeal on an order passed by the same Court, which is not tenable under law and the Court has no power to review its own order and that the petitioner has no *locus standi*, as he was neither arrayed as accused or victim in this case so far. It is also stated that the crime was registered on 02.02.2017 and the petitioner had purchased the property on 16.12.2017, which clearly establishes that the petitioner had purchased the said property after registration of the crime. The petitioner himself admits that the property stands in the name of A-1 and his wife and as such the petitioner is having

knowledge that the same stands in the name of A-1. It is further stated that the petitioner having purchased the property, after the case was registered with the knowledge that the same stands in the name of A-1, is not entitled for any relief. After considering the rival submissions and the material available on record, the trial Court, by an order dated 14.03.2019, dismissed the aforesaid CrI.M.P.No.1830 of 2018.

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

Sri P.Venugopal, learned Senior Counsel, appearing for Sri K.Suresh Reddy, learned Counsel for the petitioner, reiterating the contents made in the petition, would submit that A-1 has nothing to do with the property in question and the said property was purchased by the wife of A-1 with her Streedhana, in the year 1995 long prior to the alleged incident. The trial Court failed to consider the fact that the petitioner is a third party and he is not at all the accused in the above crime and that there is no allegation against the petitioner that he is responsible for evasion of tax by the dealers concerned and as such the order passed by the Magistrate in freezing the property of the petitioner is *ex facie* illegal. In support of his contention, learned Senior Counsel relied on the judgment of the

Apex Court in *Nevada Properties Private Limited through its Directors v. State of Maharashtra and another*¹

Learned Additional Public Prosecutor appearing for the respondent/complainant would submit that the case is still under investigation and the petitioner had purchased the property in question after registration of crime and as such he has no *locus standi* to seek any relief.

In *Nevada Properties Private Limited through its Directors v. State of Maharashtra and another (1 supra)* the Apex Court in para Nos.20 and 21, held 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

¹ 2019 Law Suit (SC) 1661

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*²). 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.”

² (2014) 10 SCC 663

In the instant case, the crime was registered on 02.02.2017 against A-1 to A-5, for the offences punishable under Sections 406, 409, 420 and 120 (B) read with Section 34 of I.P.C, wherein it is alleged that A-1 and A-2 in collusion with the officials of the Commercial Tax Office, Bodhan (A-3 to A-5), created bogus challans paid by genuine VAT payers and caused entries in the VATIS portal as false entries and that the investigation is in progress. During the course of investigation the C.I.D. filed a requisition before the learned Magistrate to freeze the list of properties stands in the name of A-1 and A-2 and their family members stating that A-1 and A-2 have procured immovable properties worth Crores of rupees at Nizamabad, Bodhan, Hyderabad and some other places and basing on the said requisition, the learned Magistrate passed orders on 19.05.2018 and addressed a letter dated 21.05.2018 directing the Commissioner and Inspector General, Registration and Stamps, Hyderabad, to freeze further registration of the immovable properties stand in the name of A-1 and A-2 and their family members.

Admittedly, the petitioner, who is a third party, had purchased the property i.e., M.No.5-4-38, situated at Dwarakanagar, Nizamabad, from A-1 and his wife on 16.12.2017. A perusal of the material on record would show that A-1 and his wife had purchased the subject property in the year 1995 and the VAT Act came into force in the year 2005 and the report itself discloses that A-1 and A-2

committed the offence from 2012 onwards. Since the vendors of the petitioner have acquired the subject property in the year 1995, the same is nothing to do with the present crime which was committed from 2012 onwards. Therefore, this Court is of the opinion that freezing the subject property is illegal.

Accordingly, the Criminal Petition is allowed and the Commissioner and Inspector General, Registration and Stamps, Hyderabad, is directed to defreeze the property covered under document No.9374 of 2017, dated 16.12.2017 shown at Sl.No.2 in the list of properties.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G.SRI DEVI

10.03.2020
gkv/Gsn



