

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5498 of 2018

Abhijeet Ranjan Son of Sri Dilip Kumar Das Resident of Mohalla-
Gandhi Murti Road No. 2, Patel Nagar, Police Station- Shastrinagar,
District- Patna- 800 023.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Govt. of Bihar, Patna.
2. The Additional Director General of Police (Headquarter), Govt. of Bihar, Patna.
3. The Deputy Inspector General of Police, Central Range, Govt. of Bihar, Patna.
4. The District Magistrate-cum-Collector, Patna.
5. The Senior Superintendent of Police, Patna.
6. The City Superintendent of Police (Central), Patna.
7. The Deputy Superintendent of Police, Kotwali, Patna.
8. The Station House Officer, Patliputra Police Station, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Vikas Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 04-01-2021 This writ application was preferred seeking inter-alia a direction to the respondent authorities to unseal the shop bearing no. 502 situated at 5th Floor, Kumar Commercial Complex, Ram Gulam Chowk, Exhibition Road, Patna which was allegedly sealed by the respondent authorities on 07.07.2017. By virtue of the order dated 02.04.2018 passed by



this Court the shop in question has already been re-posessed by the petitioner. At this stage, learned senior counsel for the petitioner is praying for a direction to initiate appropriate proceeding against the erring police officer and award of an adequate amount of compensation to the petitioner.

The action towards sealing of the shop of the petitioner was taken pursuant to the registration of Patliputra P.S. Case No. 217/2017 dated 04.07.2017 for the offences alleged under Sections 420, 379, 120B of the Indian Penal Code, Section 66(C) of Information Technology Act, 2000 and Sections 37(A)(B)/38(1)(2) of Bihar Prohibition and Excise Act, 2016.

It is the case of the petitioner that he had promoted a company in the name and style of 'SBDF Info Solution Private Limited' with an object to provide outsourcing job to the unemployed youths. The petitioner had hired shop bearing no. 502 at the location mentioned hereinabove and had installed 22 numbers of CPU with other related electronic gadgets and created infrastructure for installing the CPU. According to the petitioner he had invested a sum of Rs. Five Lakhs in the installation of these equipments.

On 04.07.2017, the Sub-Inspector of Police, Patliputra



Police Station lodged a First Information Report by recording his self-statement. According to the informant, on some information he had raided Flat no.1F in R.D. Tower situated at Indira Nagar, Chandapuri Enclave from where he apprehended three persons in presence of independent witnesses. The informant recovered half bottle of Royal Stag Whiskey containing 350 ml. liquor and it is alleged that the apprehended persons disclosed their names. Further disclosed the name of one Pawan Gupta and a friend of Pawan Gupta as the person who had fled away.

It is alleged that on interrogation one of the apprehended accused namely Ashish Gupta disclosed that he has a shop at 3rd Floor of NRI Plaza under the name and style of AVTC Company and he was running a call centre. It is alleged that the said Ashish Gupta also disclosed that he was impersonating himself as an USA official and collected fine from the customers/foreigners and for all these purposes he had been working in connivance with some other persons. Name of this petitioner was allegedly disclosed as one of the persons engaged in the same trade and on the basis of this statement the raiding team conducted the raid in the shop of the petitioner.

It is alleged that the shop of the petitioner was sealed



during night hours in presence of strangers and all the computers and other equipments kept there were seized.

The petitioner claims that there was no recovery of any incriminating article from the shop of the petitioner and that he was carrying a bonafide business and there was no allegation of any malpractice through his establishment but the police officials misused their powers and harassed the petitioner by sealing his shop premises which has resulted in loss of business and other consequential losses. The petitioner also submits that he has not only been subjected to economic loss but has also suffered mental agony for which he prays for an award of adequate amount of compensation.

Respondent no. 7 & 8 have filed their counter affidavit. These respondents have defended their action citing Section 102 of the Code of Criminal Procedure and Section 80 of the Information and Technology Act. They have also relied upon Section 165 Cr.P.C. as according to them the said provision empowers a police officer making an investigation, who has a reasonable ground of believing that anything necessary for the purpose of an investigation into any offence and which in his opinion cannot be otherwise obtained without undue delay can search, or cause search to be made for such a



thing.

After hearing learned Senior Counsel and the then learned Government Advocate No. 1, on 02.04.2018 this court passed the following order:-

“Issue notice to the respondents.

The respondents to file counter affidavit and indicate to this Court as to how and under what authority of law the business premises of the petitioner could be sealed and the property contained therein seized if offences U/S 420, 379 read with Section 120B of the Indian Penal Code is only made out against the petitioner on a bare reading of the F.I.R. in connection with Patliputra P.S. Case No. 217 of 2017.

A reading of the F.I.R. does not indicate that any offence under the Bihar Prohibition and Excise Act, 2016 is made out against the petitioner. At best, the offence against the petitioner would be under Section 420, 379, 120B IPC read with Section 66(C) of the I.T. Act and, if that be so, how and under what authority the premises of the petitioner was raided and property sealed and confiscated without any warrant of seizure or search from a court of competent jurisdiction or authority by a court of competent jurisdiction or a statutory authority. The State Government to clarify these aspects of the matter.

If we find that the officers concerned have misused the powers available with them we would take action against them including the compensating the petitioner for the illegal acts on the part of those officers.

We direct unsealing of the premises and returning of the property to the petitioner, except those properties which are required to be retained under the I.T. Act in accordance with law.

List the matter in the next week.”



After the aforesaid order was passed the petitioner filed a supplementary affidavit on 7th of May, 2018. In his supplementary affidavit, petitioner has stated that when he went to his rented premises, he found that another set of locks had been used to seal the shop and since the sealing authorities were not handing over the key of the locks, finding no other option he broke the lock and opened the premises in presence of his landlord and other local persons and found the articles missing from the shop-cum-office of the company. The petitioner has mentioned the description and quantum of the missing articles in paragraph '1' of the supplementary affidavit.

He has also stated that on 03.07.2017 at about 8:00 P.M. his shop was raided and police party had entered in the shop premises after breaking open the lock, the seizure list was prepared in presence of some strangers who are said to be the residents of Patliputra. The seizure list shows time as 3:30 A.M. dated 04.07.2017.

The respondent no. 7 & 8 have filed a supplementary counter affidavit in which they have enclosed Annexure 'B' which is said to be a letter of acceptance under the signature of brother of the petitioner. Annexure 'B' to the supplementary counter affidavit shows that the brother of this petitioner has



received back some of computer equipments from police custody.

In today's hearing, Mr. Ramakant Sharma, learned Senior Counsel for the petitioner submits that because of the misuse of power by the Sub-Inspector of Police who is himself an informant of Patliputra P.S. Case No. 217/2017, the petitioner has suffered in his life in various ways. It is his submission that the manner in which the police officials particularly the Sub-Inspector of Police has acted in this case, he is required to be proceeded against and the whole matter be investigated by a responsible police official.

Mr. Vikas Kumar, learned SC-11 has opposed the prayer of learned Senior Counsel. It is submitted that the case involves disputed question of facts and this Court sitting in its writ jurisdiction need not award any compensation to the petitioner.

Consideration

We have given our anxious consideration to the entire facts and circumstances of the case. We are prima-facie of the view that the informant who was a police officer had no reason to act in haste in conducting a raid in the premises of the petitioner during the night hours. The petitioner has alleged that



the locks of the shop were broken by the informant and in presence of strangers the raid was conducted, if it is correct then it is a matter of concern as the police officer having registered a First Information Report in his own pen cannot be allowed to give a go-bye to the established procedure of law. We find that the respondent authorities are disputing the allegation of sealing of the shop premises of the petitioner. In these facts and circumstances, this Court is of the considered opinion that the prayer of the petitioner for award of compensation cannot be accepted without an adjudication on factual aspects. This Court would, however, hasten to add that it would not be taken as any opinion of this Court on the claim of the petitioner for award of compensation and it will be open for the petitioner to seek his remedy claiming compensation under the common law before a competent court.

We are satisfied that the allegations of the petitioner that the locks of his shop were broken by the informant who conducted the raid in the night hours only in presence of strangers without having any search warrant in his hand is required to be enquired into by the Senior Superintendent of Police, Patna. The Senior Superintendent of Police, Patna is, therefore, directed to look into the allegations of the petitioner,



conduct an independent inquiry in the matter either himself or under his supervision through any other officer in the rank of Superintendent of Police. Such inquiry be completed within a period of three months from the date of receipt/communication of this order and consequential action be taken based on the said report in accordance with law.

The writ application stands disposed off accordingly.

(Sanjay Karol, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

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