

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2141 OF 2021

1 Sangeeta Sanjay Malavankar
@ Sangeeta Sandeep Sarvagod
Age: 53, Occ: Service,,

2 Sandeep Bhimrao Sarvagod
Age: 47, Adult, Occ: Service,
Both residing at Room No.M/61,
3rd Floor, BEST Kamgar Vasahat,
Dr.S.S.Rao Road, Parel,
Mumbai 400 053

...Petitioners

Versus

The State of Maharashtra
Through the Public Prosecutor,
And Rabale Police Station at
Navi Mumbai

... Respondents

...

Mr. Deepak S. Padwal for the Petitioners.

Mr. A.R. Patil , APP for the Respondent-State.

...

CORAM : SANDEEP K. SHINDE J.
DATE : DECEMBER 07 , 2021.

ORAL JUDGMENT :

1. **Rule.**
2. Rule made returnable forthwith.
3. This petition filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), assails the order dated 12th March, 2020 in Criminal Revision Application No.212 of 2019, by which the learned Additional Sessions Judge, upheld, police action of seizing immovable property of the petitioners, who are the accused in Crime No.I-217 of 2019.

BACK-GROUND FACTS:

4. Petitioners are accused in Crime No.I-217 of 2019 registered with Rabale Police Station, Navi Mumbai under Section 420 of IPC on a complaint filed by Jayshree Kisan

Ghosalkar. Pending investigation, Investigating Officer moved an application on 12th July, 2019 seeking approval to attach/seize the immovable property of the petitioners, suspected to have been purchased from the crime proceeds. The learned Judicial Magistrate, First Class, vide order dated 12th July, 2019 granted permission to attach the property in exercise of the powers under Section 105-C of the Cr.P.C. Pursuant thereto, Investigating Officer issued a notice/order under Section 105-A of the Cr.P.C. and informed the petitioners that they have been restrained from selling and/or alienating the said property without permission of the Court. This order was challenged in the revision before the learned Additional Sessions Judge, Thane. The learned Sessions Judge held, that although the Magistrate could not have invoked Section 105-C of the Cr.P.C., nevertheless, seizure/attachment, cannot be faulted with in view of the provisions under Section 102 of the Cr.P.C. Resultantly, revision was dismissed. That order is assailed in this Writ Petition.

5. Heard learned counsel for the petitioners and Mr. Patil, the learned Prosecutor for the State. Perused the impugned orders.

6. Chapter VIIA of the Cr.P.C, was inserted by the Act of 40 of 1993. In the statement and the objects and the reasons to the Act of 40 of 1993, there is a clear reference, that the Government of India had signed an agreement with the Government of United Kingdom of Great Britain and Northern Ireland for extending assistance in the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds of crime (including crimes involving currency transfer) and terrorist funds, with a view to check the terrorist activities in India and the United Kingdom. The statement further goes on to provide the three objectives, viz. :

(a) the transfer of persons between the contracting States including persons in custody for the purpose of assisting in investigation or giving evidence in proceedings;

(b) attachment and forfeiture of properties obtained or derived from the commission of an offence that may have been or has been committed in the other country; and

(c) enforcement of attachment and forfeiture orders issued by a court in the other country.”

. After considering the objects and statements and reasons to the Amending Act of 40 of 1993, the Apex Court in the case of State of **Madhya Pradesh v. Badram Mithani** **2010 2 SCC 602** has held that property envisaged in Section 105-C(1) cannot be ordinary property earned out of ordinary offences committed in India, and that provisions under Chapter VIIA of the Cr.P.C. are not applicable in respect of local offences like gambling or offences under the Indian Penal Code, 1860. Therefore, in view of the law laid down by the Apex Court in the case of **Badram Mithani (Supra)**, the order passed by the learned Magistrate dated 12th July, 2019 under Section 105(C) of the Cr.P.C. was clearly not maintainable.

7. In so far, as the order passed by the learned Additional Sessions Judge in Revision is concerned, it may be stated that the learned Judge has overlooked the judgment in the case of **Nevada Properties Pvt. Limited v. State of Maharashtra 2019 20 SCC 119** wherein Hon'ble Apex Court has held that Section 102 is not general provision, which enables and authorises police officer to seize immovable property for being able to produce in criminal Court during the trial and thus power of seizure in Section 102 is to be limited to movable property.

8. Therefore, in view of the law enunciated by the Apex Court in the case of State of **Badram Mithani (Supra)** and **Nevada Properties Pvt. Ltd. (Supra)**, the impugned orders are quashed and set aside.

9. Rule is made absolute in the aforesaid terms.

10. Petition is disposed of.

(SANDEEP K. SHINDE,J.)