

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.7557 of 2018
and W.M.P.Nos.9435 to 9437 of 2018

Dr.R.Selvammal

.... Petitioner

vs.

1. The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
2. The Deputy Director of Medical and Rural
Health Service and Welfare,
District Family Welfare Bureau,
Tiruvannamalai - 600 601

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned notice vide Na.Ka.No.70/A1/2018 dated 01.02.2018 issued by the second respondent and quash the same and to direct the respondents to remove the seal on the residence cum clinic, namely, Sri Bhuvaneshwari Hospital at No.260, Thiruvoodal Street, Tiruvannamalai 606 601.

For Petitioner : Mr.OM.Prakash, Senior Counsel
for Mr.S.Kumara Devan

For Respondents : Mr.V.Shanmugasundar, SGP

ORDER

This Writ Petition has been filed challenging the notice dated 01.02.2018 issued by the second respondent sealing the premises of the petitioner, where, according to the respondents, the petitioner's hospital are illegally terminating pregnancies.

2. Mr.OM.Prakash, learned Senior Counsel appearing on behalf of Mr.S.Kumara Devan, learned counsel for the petitioner would submit that the impugned notice is illegal, unlawful and

arbitrary and is not supported by any statutory provision. It is also contended by the learned Senior Counsel that even without any prior notice, the respondents have sealed the premises of the petitioner.

3. The learned counsel for the petitioner also drew the attention of this Court to a Judgment of the Hon'ble Supreme Court in the case of Nevada Properties Pvt.Ltd., -vs- The State of Maharashtra dated 24.09.2019, reported in AIR 2019 SC 4554 and would submit that as per the aforesaid decision, in case of commission of any criminal offence under Section 102 of Cr.P.C, the respondents are empowered to only seize movable properties and do not have the power to seal immovable properties. According to the learned Senior Counsel for the petitioner, in contravention of the settled provisions of law, the respondents have sealed the premises of the petitioner's hospital, even without issuing any prior notice.

4. Section 102 of The Code of Criminal Procedure, 1973 reads as follows:

"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) ¹ Every police officer acting under subsection (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, 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."

5. Admittedly, the property which has been seized is not the subject matter of the crime. The case of the respondents is that the petitioner has committed the criminal offence of illegally terminating pregnancies without following the due procedure established under Law. Section 102(1) of Cr.P.C makes it clear that only in cases where the 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, the Police Officer has got the power to seize the same. In the case on hand, the property, as observed earlier, is an immovable property and is not the subject matter of the crime. If at all, the respondents suspect that illegal termination of pregnancies are taking place in the petitioner's hospital, they can very well prosecute the offenders, but they do not have the right to seal the premises. The decision of the Hon'ble Supreme Court referred to by the learned Senior Counsel for the petitioner is squarely applicable to the facts of the instance case.

6. Paragraphs 6 and 7 of the aforesaid decision of the Hon'ble Supreme Court is extracted hereunder.

"6. The question in Tapas D. Neogy case [State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] was whether a bank account of an accused or any relation of the accused was "property" within the meaning of Section 102 of the Code and if so, whether the investigating officer has the power to seize the bank account or issue a prohibitory order restraining operation of the bank account. Reference was made to several judgments of the High Courts, some of which would be discussed later, to hold as under: (SCC pp. 694-95, para 12)

"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore,

persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka [Malnad Construction Co. v. State of Karnataka, 1993 SCC OnLine Kar 197 : ILR 1993 Kar 3082] , Gauhati [Purbanchal Road Service v. State, 1990 SCC OnLine Gau 40 : (1991) 1 Gau LR 220] and Allahabad [Textile Traders Syndicate Ltd. v. State of U.P., 1959 SCC OnLine All 207 : AIR 1960 All 405] High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed [Tapas Dhrublal Neogy v. A.K. Asthana, Criminal Application No. 826 of 1996, order dated 9-4-1997 (Bom)] error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

7. Money, as per clause (7) of Section 2 of the Sale of Goods Act, 1930, is neither goods nor movable property, albeit Section 22 IPC defines the term "movable property" to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. The expression "movable property" has not been specifically defined in the Code. In terms of Section 2(y) of the Code, words and meanings defined in IPC would equally be applicable to the Code. Money, therefore, would be property for the purposes of the Code. Money is not an immovable property."

As seen from the aforesaid decision, only movables can be attached and not any immovable property as done in the present case.

7. Infact, in paragraph 10 of the Counter affidavit filed by the second respondent before this Court, he has stated that the first respondent has not sealed the petitioner's clinic or her residential house and he would further state that the District Welfare Board Officials might have sealed the clinic, as it was used for illegal termination of pregnancy. But as seen from the impugned notice, the premises of the petitioner has been sealed only by the second respondent. By total non-application of mind, it has been stated by the second respondent in his counter affidavit that the District Welfare Board Officials might have sealed the clinic of the petitioner, as it was used for illegal termination of pregnancy, but in fact, as seen from the impugned notice, only with the knowledge of the second respondent, the petitioner's clinic was sealed. This itself will clearly show that without authority under Law, the premises of the petitioner has been sealed. Infact, as early as on 20.04.2018, this Court granted an order of interim direction in favour of the petitioner directing the respondents to remove the seal from the petitioner's hospital and permitted the petitioner to use the same. Admittedly, till date, without any hindrance, the petitioner has been making use of his clinic.

8. It is also submitted by Mr.V.Shanmugasundar, learned Special Government Pleader appearing for the respondents that a criminal case is still pending against the petitioner in Crime No.228 of 2018 and no charge sheet has been filed against the petitioner till date.

9. In view of the settled position of law as held by the decision of the Hon'ble Supreme Court referred to supra, this Court is of the considered view that the sealing of the petitioner's premises by the respondents under the impugned notice is arbitrary and illegal. Hence, the same will have to be necessarily quashed. Accordingly, the impugned notice dated 01.02.2018 is hereby quashed and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
2. The Deputy Director of Medical and Rural
Health Service and Welfare,
District Family Welfare Bureau,
Tiruvannamalai - 600 601.

+1cc to Mr.S.Kumaradevan, Advocate Sr.14925

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