

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.685 of 2017

Arising Out of PS. Case No.-5 Year-2015 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

=====

Pawan Kumar Son of Sri Rameshwar Prasad Singh, Resident of Village and P.O.- Sihma, P.S.- Matihani, District at present Shashi Palace, Ramkrishna Nagar, Hemra Road, ward no.20, Begusarai, P.s.- Begusarai Town, District- Begusarai,

... .. Petitioner/s

Versus

1. The State Of Bihar Through Economic Offence Police, Bihar, Patna and Ors
2. Superintendent of Police , Begusarai,
3. Sita Sharan, District Manager, Bihar Stare Food Corporation, Supaul,
4. Officer Incharge of Begusarai Town Police Station, Begusarai.
5. Investigating Officer, Economic Offence P.S. Case No. 5/2015, Bihar, Patna.

... .. Respondent/s

=====

with

Criminal Writ Jurisdiction Case No. 574 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

- =====
1. Rajeev Kumar and Ors son of Sri Rameshwar Prasad Singh
 2. Pankaj Kumar son of Sri Rameshwar Prasad Singh
 3. Deepak Kumar son of Sri Rameshwar Prasad Singh
 4. Mridula Singh wife of Sri Sanjeev Kumar Singh
 5. Pinki Kumari wife of Sri Rajeev Kumar
 6. Lalita Kumari wife of Sri Pawan Kumar
 7. Bandana Kumari wife of Sri Pankaj Kumar
 8. Rashmi Kumari wife of Sri Deepak Kumar All residents of village and P.O. Sihma, P.S. Matihani, District Begusarai at present Shashi Palace, Ramkrishna Nagar, Hemra Road, Ward No. 20, Begusarai, P.S. Begusarai Town, District - Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Economic Offence Police, Bihar, Patna and Ors
2. Superintendent of Police, Begusarai.
3. Sita Sharan, District Manager, Bihar State Food Corporation, Supaul.
4. Officer Incharge of Begusarai Town Police Station, Begusarai.
5. Investigating Officer, Economic Offence P.S. Case No. 5/2015, Bihar, Patna.



... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 685 of 2017)

For the Petitioner/s : Mr. Sanjeet Kumar

For the Respondent/s : Mr.Prabhat Kumar Vermaaag3

(In Criminal Writ Jurisdiction Case No. 574 of 2017)

For the Petitioner/s : Mr. Aditya Dev, Advocate

For the Respondent/s : Mr. Md. N.H Khan Sc-1

For the State : Md. Harun Qurrashi, AC to SC-01

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 28-06-2023 Heard Sri Sanjeet Kumar learned counsel for the petitioner in both the cases, learned counsel for the State and Sri Vishvanath Prasad Sinha, learned senior counsel assisted by Ms. Soni Srivastava, learned counsel for the E.O.U.

This writ applications have been filed for quashing the letter no. 1556 dated 23.03.2017 issued by the Investigating Officer, Economic Offences Unit, Bihar, Patna, by which he requested the Superintendent of Police, Begusarai to depute police force for the purpose of seizure of the immovable property of the present petitioners.

Learned counsel for the petitioners has submitted that the police has no power to seize/attach immovable property under Section 102 of the Cr.P.C.

He has drawn the attention of this Court to judgment and order dated 24.01.2018 (Cr. W.J.C. No. 1334 of 2017 passed by a coordinate Bench of this Court).



I have considered the submissions of the parties and also peruse the judgment and order dated 24.01.2018 passed by a coordinate Bench of this Court. In the present case, the issue is as to whether the police can direct seizure/attach of an immovable property or not. This issue has already been decided by this Court in Cr. W.J.C. No. 1334 of 2017 by a coordinate Bench of this Court.

It will be relevant to quote paragraph nos. 12, 13, 14 and 15.

*12. I have heard learned senior counsel for the parties and perused the records. The power of a police officer to seize the properties as envisaged under Section 102 Cr.P.C. is not in question. The issue raised in the present case is as to whether a police officer can direct seizure/attachment of an immovable property. A co-ordinate Bench of this Court in the case of **Brajesh Kumar Srivastava (Supra)** had the same issue fallen for consideration. The learned co-ordinate Bench of this Court discussed the Full Bench judgment of the Hon'ble Bombay High Court in the case of **Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood through its Power of Attorney Holder Mr. Rajesh Baxi Chetna Properties Pvt. Ltd. vs. The State of Maharashtra** reported in 2011 (1) Bom. C.R. (Cri.) 326; and after taking note of the distinction made by the Full Bench of the Hon'ble Bombay High Court in the matter of **Sudhir Basant Karnataki (supra)** with that of the judgment rendered by the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Tapas D. Neogy** reported in 1999(7) SCC 685; and, further after discussion of the judgment of the Hon'ble Apex Court in the case of **M.T. Enrica Lexie Vs. Doramma & Ors.** reported in (2012) 6 SCC 760 concluded in paragraph 41 as under:*

"41. Keeping in mind the ambit and scope of



*Section 102 CrPC and the ratio laid down by the Full Bench of the Bombay High Court in **Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood** (supra) and the Kerala High Court in Kuriachan Chacko (supra), this Court is also of the considered opinion that under Section 102(1) of the CrPC the police have no power to seal the immoveable property and the word seize under Section 102 of the CrPC used under Section 102 of the CrPC would mean only actual taking possession of the moveable property. I find myself in complete agreement with the ratio laid down by the Full Bench of the Bombay High Court and the Kerala High Court in the aforementioned decisions with regard to the powers of the police officer to attach immoveable property under Section 102(1) of the CrPC."*

13. *So far as the reliance placed by learned senior counsel on the observation of the learned co-ordinate Bench of this Court in Cr.W.J.C. No. 33/2016 is concerned, there is no quarrel with the propositions that the power under Section 102 Cr.P.C. is a power to be exercised by any police officer and not by any executive authority or District Magistrate. The co-ordinate Bench in Cr.W.J.C. No. 33/2016 was neither addressed on the point as to whether police has power to attach the immoveable property nor the learned Judge has answered on this point.*

14. *From a reading of Section 102 Cr.P.C. and a judicial pronouncement on the subject, I am in agreement with the reasoning and rationale of the judgment of this Court in the case of **Brajesh Kumar Srivastava** (supra). The writ application is therefore required to be allowed by setting aside the impugned orders and consequential action and is accordingly allowed.*

15. *To me, it appears that the Code of Criminal Procedure contains specific provisions for attachment of the properties acquired from proceeds of crime. The power conferred upon the regular courts and officers' in-charge of investigation and the manner in which such powers are to be*



exercised should be in accordance with the Code. Since this court has not been called upon to discuss such powers and provisions in that regard and both parties have argued only with reference to the power of police under Section 102 Cr.P.C., I am not extending the discussions for the present.

In my view, this case is squarely covered by the aforesaid judgment.

Accordingly, this application is allowed and the letter no.1556 dated 23.03.2017 is hereby quashed. However, it is clarified that in case, the Investigating Officer has got materials to form a reasonable belief that the immovable properties have been acquired by the petitioners from ill-gotten money and the same is required to be protected from being alienated during pendency of the case, he will have liberty to take appropriate steps in accordance with law.

(Sandeep Kumar, J)

Guddu/-

U		T	
---	--	---	--

