

(2021) 05 DEL CK 0213

In the Delhi High Court

Case No : Criminal Writ Petition No. 1256 Of 2020

Indiabulls Commercial Credit Limited

APPELLANT

Vs

Economic Offences Wing & Ors

RESPONDENT

Date of Decision : 31-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 102, 102(1), 145, 146, 451, 452, 453,
454, 455, 456, 457, 458, 459, 482

Citation : (2021) 05 DEL CK 0213

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Vivek Pahwa, Ankit Banaoti, Rajesh Mahajan, Jyoti Babbar,
Amandeep Singh, Vivek Kohli, Mudit Gupta, Rudreshwar Singh, Gautam Singh

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

W.P.(Crl.) 1256/2020 & Crl.M.A.11172/2020 (stay)

1. Present petition has been filed under section 226 of the Constitution of India read with section 482 Cr.P.C. seeking directions thereby against

respondent no.1 for quashing of order/notice dated 05.08.2019 bearing No.531/R-ACP/SEC-V/EOW issued by the office of the Offences Wing, New

Delhi to the Sub-Registrar-IIA, Punjabi Bagh, Nangloi, Delhi under section 102 of the Code of Criminal Procedure, 1973.

2. Counsel for the petitioner submits that the petitioner herein is a Non-Banking Financial Company, registered with the Reserve Bank of India and

also a financial institution under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(SARFAESI Act). The petitioner has granted two loans against a property to respondent nos. 4 to 10 and upon failure to pay EMI's on time, the loan accounts of the said respondents were declared Non-Performing Assets (NPA) and statutory proceedings under the SARFAESI Act were conducted.

3. Counsel for the petitioner further submits that the property in question bearing Plot No. 32, Road No. 42, Punjabi Bagh (West), Delhi - 110026 is mortgaged, however, vide impugned notice dated 05.08.2019, ACP/EOW communicated to the Sub-Registrar II-A, Punjabi Bagh, Nangloi, Delhi as reproduced under:

"Investigation of the above said case is being conducted by the undersigned at Section V, EOW, Mandir Marg, New Delhi.

Brief facts of the case are that Rajesh Project (I) Pvt. Ltd. whose managing Director is Mr. Rajesh Goyal had launched a residential

housing project "RG Luxury Homes" in Greater Noida UP. He collected more than 600 crore from 1672 flat buyer 2010 onwards for

the said project but the abovesaid company could not complete the project. All the money collected from the complainants/ investors were siphoned off to the different accounts.

The transaction related to this property is subject matter of investigation of the above mentioned FIR. It is also apprehended that the property may be further transferred.

In view of the above facts, it would be appropriate to place an embargo on the further sale/transfer on the above said property i.e. Plot no.

32, road no. 42 registered in the name of M/s R K Sons (HUF) / Rajesh Goyal in Punjabi Bagh West New Delhi under the provision of 102

Cr.P.C.

Confirmation regarding placing embargo on the above land may also be intimated to the undersigned. Larger public interest is involved in the matter and therefore, earliest action and confirmation is desirable."

4. Counsel for petitioner submits that the impugned order is in direct contravention of Section 102 Cr.P.C. as the said provision does not grant any power for the seizure of immovable properties and same is against law and deserves to be set aside. Accordingly, for convenience, section 102 of

Cr.P.C. is reproduced as under:

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 sub- section (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. To strengthen his arguments, counsel for the petitioner has relied upon the case of Nevada Properties Private Limited vs. State of Maharashtra:

2019 SCC OnLine SC 1247, wherein the Hon'ble Supreme Court has held as under:

18. Having held and elucidated on the power of the Criminal Court, we find good ground and reason to hold that the expression

'any property' appearing in Section 102 of the Code would not include immovable property. We would elucidate and explain.

19. The first part of sub-section (1) of Section 102 of the Code relates to the property which may be alleged or suspected to have been

stolen. Immovable property certainly cannot be stolen and cannot fall in this part. The second part relates to the property which may be

found by a police officer under circumstances which create suspicion of the commission of any offence. We have already referred to the

judgments of the Delhi High Court in the case of P.K. Parmar (supra), Ms. Swaran Sabharwal (supra), and Jagdish Chander (supra),

which have elucidated and in a restricted and narrow manner defined the requirement for invoking the second part.

However, we have come across a decision of this Court in Teesta Atul Setalvad v. State of Gujarat , on an appeal from the judgment of the

Gujarat High Court and had dealt with a situation when an act of freezing the

accounts was a sequel to the crime as the crime was detected earlier. The Gujarat High Court took a somewhat contrary view, by not interfering and directing defreezing, observing that even if the action of the investigating agency at the inception to seize may not be regular, the Court cannot be oblivious to the collection of substantial material by the investigating agency which justifies its action under Section 102 of the Code. Further when the investigation had progressed to a material point, de-freezing the bank accounts on the basis of such arguments would paralyse the investigation which would not be in the interest of justice. After referring to the factual matrix in *Teesta Atul Setalvad (Supra)*, this Court observed that the Investigating Officer was in possession of material pointing out to the circumstances that had created suspicion of the commission of an offence, in particular the one under investigation, and therefore exercise of power under Section 102 of the Code would be in law legitimate as it was exercised after following the procedure prescribed in sub-sections (2) and (3) of the same provision.

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 seizure. Equally important, for the purpose 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 chargesheet. 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. 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 v. State of Bihar).

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 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.

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37. If the argument of the appellant and the State of Maharashtra is accepted then there was no need for the legislature to have introduced

Chapter VIIA. It would also be pertinent to mention that the power of attachment and forfeiture is given to courts and not to police officer.

As pointed out in the judgment of my learned brother, if a police officer is given the power to seize immovable property it may lead to an

absolutely chaotic situation. To give an example, if there is a physical fight between appellant is to be accepted, the police official would be

entitled to seize the tenanted property. This would make a mockery of rent laws. To give another example, if a person forges a will and

thereby claims property on the basis of the forged will, can the police officer be given the power to seize the entire property, both movable

and immovable, that may be mentioned in the will? The answer has to be in the negative.

Otherwise, it would lead to an absurd situation which could never have been envisaged by the Legislature. The power of seizure in Section

102 has to be limited to movable property.

38. As far as the meaning of property in Section 452 of the Cr.P.C. is concerned, that is not a question referred to the larger Bench and

therefore, I would refrain from saying anything about that.

39. In view of the above, I would answer the reference by holding that the phrase "any property" in Section 102 will only cover

moveable property and not immovable property.

6. Learned ASC appearing on behalf of the State submits that the intent of the investigating agency vide impugned notice is not to attach, seize or seal

the property but to preserve the property in question so that any third-party interest is not created without causing dispossession. It was done in the

larger interest of the investors.

7. It is further submitted by learned ASC that the notice issued is not against the overall spirit of the judgement of the Hon'ble Supreme Court in

Nevada case (supra). However, writing a letter to revenue authorities to maintain status quo qua the title is a permissible step as it is distinct and

different from attaching, sealing & seizure of immovable property as observed by the Hon'ble Supreme Court in its judgement.

8. As per the dictum of above-cited judgment, the power of seizure in section 102 Cr.P.C. has to be limited to moveable property whereas in the

present case, property in question is immoveable, thus, the steps taken under section 102 Cr.P.C. is illegal.

9. After hearing counsel for parties and in view of above discussion on the judgment of Nevada case (supra), notice under section 102 Cr.P.C. is not

sustainable. Accordingly, the said notice is hereby set aside.

10. The order passed by this Court shall not affect any of the proceedings pending either before any court or tribunal.

Crl.M.A.1854/2021 & Crl. M.B. 721/2021

11. Present applications have been filed by the applicants seeking intervention in the present petition.

12. Since the impugned order is limited to the issue of section 102 Cr.P.C., therefore, no order is required to be passed in the present applications.

13. Therefore, same are accordingly, dismissed.

14. Any other pending application, if any, also stands disposed of.