
(2014) 08 MP CK 0081
In the Madhya Pradesh High Court
Case No : Mcrc 6648/14

Vinod Kumar Khator

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Madhya Pradesh Upcharyagriha Tatha Rujopchar Sambandhi Sthapnaaye
(Registrikaran Tatha Anugyapan) Adhiniyam, 1973 — Section 3, 8

Citation : (2014) 08 MP CK 0081

Hon'ble Judges : B.D. Rathi, J

Bench : Single Bench

Advocate : Sanjay Gupta and Vinod Kumar Khator, Advocate for the Appellant;
Rajiv Upadhyaya, Panel Lawyer, Advocate for the Respondent

Final Decision : Dismissed

Judgement

B.D. Rathi, J.—Heard finally with the consent of both the parties. By means of this petition preferred u/s 482 of Cr.P.C., the petitioner claims for the following reliefs:-

"It is therefore prayed, that this petition may kindly be allowed and the order dated 11.07.2014, passed by the 12th Additional Session Judge Gwalior, in Criminal Revision No. 200/2014. And the order dated 06.05.2014, passed by learned Judicial Magistrate 1st Class Gwalior in Criminal Case No. 16424/2013, be quashed it be directed to "unlock of the residential premises/premises, of the petitioner" forthwith, in the interest of justice."

2. Learned counsel for the petitioner submits before this court that earlier W.P. No. 5366/13(s) was filed by the present petitioner under Article 226 of the Constitution of India praying for direction to produce the entire proceedings of seizure and locking of the clinic/premises of the petitioner by respondent No. 3 therein. It was also sought to be declared that since the respondents No. 2 and 3

therein were no authority to lock the premises of the petitioner, the premises be unlocked forthwith with payment of compensation for the illegal and unauthorized act. This petition was allowed by the order dated 12/9/13.

3. Against the order passed in aforesaid writ petition, dated 12/9/13, the State came up in the appeal before the Division Bench of this court which was registered as W.A. No. 473/13. It was disposed of vide order dated 11/10/13 with the following directions:-

"(1) That the Chief Medical and Health Officer Gwalior is directed to take action in the matter within a period of two weeks from the date of receipt of copy of the order. The authority shall give an opportunity to the respondent for the proposed action and it should be within the parameters of Act of 1973 and the rules made thereunder.

(2) Up to passing of the order by the authority, the respondent be not permitted to run the clinical establishment, however, he is permitted to use the residential portion of the premises for the purpose of his residence. Impugned order passed by the writ court is modified accordingly.

No costs."

4. It is submitted by the counsel Shri Gupta that instead of obeying the directions dated 11/10/13 mentioned hereinabove, the respondents/State has filed a criminal complaint in the court of Chief Judicial Magistrate, Gwalior under Sections 3 and 8 of M.P. Upcharyagriha Tatha Rujopchar Sambandhi Sthapana (Registrikan Tatha Anugyapan) Act, 1973 and in that complaint case, an application was filed by the petitioner on 3rd March, 2014 to unlock the sealed premises of the petitioner. The said application was dismissed by CJM, Gwalior vide order dated 6/5/14 in Criminal Case No. 16424/13. Against that order, Cri. Rev. No. 200/14 was preferred. It was dismissed on 11/7/14 from the court of 12th Additional Sessions Judge, Gwalior.

5. Bringing on record the aforesaid features of the case, it is tried to argue that at the most complainant can seal the place which is part of the allegation in which the clinic was allegedly running by the petitioner but to deprive the petitioner from using the portion of his residential accommodation in the said premises, is wholly uncalled for and against the norms of the directions of the writ appellate court.

6. On the other hand, learned Panel Lawyer for the respondents/State opposed the prayer and contended that the orders passed by the courts below are well merited and call for no interference by this court.

7. After examining the arguments put forth by the counsel for the parties in the light of the directions passed by this court in W.A. No. 473/13, dated 11/10/13, this court finds that after considering the relevant provisions of the M.P. Upcharyagriha Tatha Rujopchar Sambandhi Sthapana (Registrikan Tatha Anugyapan) Act, 1973, the appellate court only permitted the petitioner to use

residential portion of the premises for the purpose of his residence. On perusal of the application filed by the petitioner before the courts-below, dated 3/3/14, it is evident that in para 5 thereof, it was admitted by the petitioner himself that the residential portion of his house is still open and the portion which was sealed by the prosecution was the same where he was running the clinic. Though, in the petition before this court it was mentioned by the petitioner in Ground "D" that the way of ingress in his residential house is going from the portion which was sealed and where the clinic was running but this fact was not mentioned in the application filed before the trial court. Therefore, it is apparent that the rejection of the application was proper and the courts below have not committed any illegality because the averments made therein are sufficient to establish that the accommodation is not required for residential purposes. In other words, it is mentioned that the place which is being taken in use for residence is not sealed except the portion where the clinic was running. Considering this, the contention of the petitioner that the orders passed by the courts below are against the directions of this court passed in W.A. No. 473/13, dated 11/10/13 are against the facts on record. The petition is therefore dismissed.