

Commander Rajiv Sardana vs State (Nct Of Delhi) & Ors on 4 May, 2023

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 938/2021 & CRL.M.A. 4709/2021

COMMANDER RAJIV SARDANA

..... Petition

Through: Mr. Anil Nag, Advocate via video conferencing.

versus

STATE (NCT OF DELHI) & ORS.

..... Respond

Through: Mr. Shoaib Haider, APP for the S

Mr. Ajay Verma with Mr. Anshul

Yadav Advocates for R2 and R3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 04.05.2023 By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks setting-aside of order dated 22.02.2021 passed by the learned Chief Metropolitan Magistrate in case FIR No. 173/2015 dated 17.12.2015 registered under sections 409/420/120B of the Indian Penal Code, 1860 at P.S.: Economic Offence Wing.

2. By way of the impugned order the learned Magistrate has allowed an application by the accused persons/respondents Nos. 2 and 3, thereby revoking the 'embargo request' dated 05.09.2017 sent by the Investigating Officer ('I.O.') to Sub-Registrar-III, Asif Ali Road, Delhi by which the I.O. had requested the Sub-Registrar not to register any documents in relation to property bearing Plot No.20, Block No. 59 Bearing No.7961, Ward No. 16, Prabhat Road, Karol Bagh, New Delhi ('subject property').

3. Notice on this petition was issued on 19.03.2021. Status report has been filed on behalf of respondent No.1/State. Replies and rejoinders have also been filed by respondents Nos. 2 and 3 and by the petitioner.

4. Mr. Anil Nag, learned counsel appearing for the petitioner submits, that the allegation in the FIR is that the subject property was bought from funds siphoned-off from M/s. AMR Infrastructures Ltd., which funds had been invested by the petitioner for purchase of a commercial unit in a project to be constructed by the company.

5. Mr. Nag submits that section 102 Cr.P.C. empowers an I.O. to seize property which may be alleged or suspected to have been stolen or which may have been found under circumstances which creates

suspicion of the commission of any offence. The relevant portion of section 102 Cr.P.C. reads 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) 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 where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, 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:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

(emphasis supplied)

6. Counsel submits that the recent decision of the Supreme Court in Nevada Properties (P) Ltd. vs. State of Maharashtra¹ has enunciated the scope of powers of an I.O. under section 102 Cr.P.C., the relevant portions of which decision reads as under:

"29. 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.

"30. 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 charge-sheet. 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 (2019) 20 SCC 119 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.

"31. 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.

"32. 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 [(2014) 10 SCC 663]). 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.

"33. 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.

"34. 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."

(emphasis supplied)

7. It is Mr. Nag's contention that since section 102 Cr.P.C. empowers an I.O. to seize documents and papers relating to immovable property, as explained by the Supreme Court in Nevada Properties (supra), in order to make that power efficacious, by necessary implication, an I.O. is also entitled to issue an embargo request to the Sub-Registrar of Assurances to prevent transfer of immovable property, since otherwise, the very purpose of section 102 Cr.P.C. will be defeated.

8. Furthermore, Mr. Nag places reliance on section 457 Cr.P.C., to submit that upon seizure of a property by a police officer, a Magistrate is entitled to make such orders as he thinks fit regarding the disposal of such property. He further draws attention to section 357 Cr.P.C., to say that as part of a sentence of fine, the court is entitled to direct that the whole or any part of the fine be paid-over as compensation to a victim. Counsel submits that the power to place an embargo upon transactions relating to immovable property is akin to the power to seize the title document of the property, which the Supreme Court has affirmed.

9. Opposing the aforesaid contentions, Mr. Ajay Verma, learned counsel appearing for respondents Nos. 2 and 3 submits, that Nevada Properties (supra) clearly enunciates the restricted powers of an I.O. under section 102 Cr.P.C. and holds that since a police officer is an 'investigator' and not an 'adjudicator' or a 'decision maker', the I.O. cannot be permitted to seize immovable property on mere suspicion of commission of an offence, since that would result in giving drastic powers to an I.O. to dispossess a person of a property only on mere suspicion, conjunctures and surmises.

10. Mr. Verma in fact points-out, that in the said decision, the Supreme Court has expressly stated that disputes and matters relating to the physical and legal possession and title of the property must be adjudicated only by the civil court. He accordingly contends, that the limited power vested in an I.O. under section 102 Cr.P.C. is only to seize documents and papers relating to an immovable property but not to seize the property itself.

11. Mr. Verma has also drawn attention to para 10 of the impugned order which reads as under:

"10. Further, in the present matter, police has filed the charge-sheet and in the charge-sheet there is no mention if the property in question was purchased from the

proceed (sic) of crime. There is no evidence available with the police to establish that the property in question which is in the name of applicant alongwith his brothers was actually purchased from the proceed of crime. Though the embargo on the property was placed in the year, 2017, however till 2021 police could not establish whether this property is proceed of crime or not. Apparently, police is acting in very casual manner in the present matter. The police officials attached the property only on apprehension, and never care to find out for three long years whether the said property was purchased from proceed of crime or not. This shows the casual manner of police in attaching property of a person, depriving him of his constitutional rights"

(emphasis supplied)

12. It is argued that as a sequitur to what has been recorded in para 10 above, the learned Magistrate has proceeded to lift the embargo placed with the Sub-Registrar in relation to dealing with the subject property.

13. Having heard learned counsel for the parties and having perused the record, this court is persuaded to hold as follows:

13.1 The power under section 102 Cr.P.C. is limited. The provision empowers an I.O. to seize documents in relation to an immovable property, where such documents are subject of an investigation. The judgment of the Supreme Court in Nevada Properties (supra) is clear: a police officer is an investigator and not an adjudicator. If a police officer is given the power to seize an immovable property itself, on mere suspicion of commission of an offence, it would amount to giving drastic and extreme powers to the police officer to also dispossess persons from such immovable property. This, the Supreme Court holds, is not the remit of a police officer since matters relating to physical and legal possession and of title to immovable property must be adjudicated by a civil court. 13.2 The Supreme Court has also expressly held, that the power under section 102 Cr.P.C. would however not bar or prohibit a police officer from seizing documents and papers relating to the title of the property. Furthermore, on settled principles, a judgment must be read as precedent only for what it decides and not what flows from what it decides 2 .What the Supreme Court has held in Nevada Properties (supra) cannot be extrapolated to read into section 102 Cr.P.C. that a police officer also has the power to issue directions to other authorities in relation to immovable property, which affect the possession and title to immovable property.

14. In the present case, though the power of the I.O. is itself restricted under section 102 Cr.P.C., the I.O. has proceeded to issue directions to the Sub-Registrar of Assurances in the following terms:

"Your (sic) are requested that the said property may not be allowed to transfer, sale mortgage etc. without prior permission of the investigating agency or concerned court. Action taken in the matter may kindly be intimated to this office along with the

certified copies of the documents pertaining to the property."

15. This is akin to issuing an order of injunction, which only a civil court can do. In light of what has been expounded by the Supreme Court in Nevada Properties (supra), issuing such a direction is clearly impermissible under section 102 Cr.P.C.

16. As a sequitur to the above discussion, this court finds no infirmity in order dated 22.02.2021 made by the learned Magistrate revoking the 'embargo request' dated 05.09.2017 and directing P.S.: EOW to issue a withdrawal letter to the concerned authorities including the Sub- Registrar-III, Asif Ali Road, Delhi to that effect.

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17. Accordingly, the present petition is dismissed as being without merit.

18. Petition stands disposed-of.

19. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J MAY 4, 2023 ds