Jagdish Chander and ors. Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/690691

Court : Delhi

Decided On : Nov-20-1989

Reported in : 40(1990)DLT233; 1990(18)DRJ204; 1990RLR90

Judge : P.K. Bahri, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 102; Indian Penal Code (IPC), 1860 - Sections 380

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1239 of 1987

Appellant : Jagdish Chander and ors.

Respondent : State and ors.

Advocate for Pet/Ap. : U.N. Bachawat,; Ramesh Gautam,; Simmi,;

Judgement :

P.K. Bahri, J.

(1) This petition has been brought under Section 482 of Criminal Procedure Code seeking quashment of letter dated May 9, 1987 by which the Investigating Officer investigating the case pertaining to Fir No. 1 14 of 1987 under Sections 380, 467, 468, 470 and 420 of Indian Penal Code had intimated the Ansal Properties and Industries Pvt. Ltd. restraining them from handing over any immovable property standing in the name of the petitioner, petitioner's wife and in the name of any

other member of the petitioner's family as the investigation in the aforesaid case was pending. The copy of the letter issued by the Investigating Officer was not filed Along with the writ petition as no such letter has been served on the petitioner by the Investigating Officer. The contents of the said letter have been read out in Court from the Police File. It is useful to re-produce the contents of the said letter which is dated May, 1987. 'To The Ansal Properties and Industries Pvt. Limited, Kasturba Gandhi Road, Ansal Bhavan, New Delhi. Sub: Request to withhold the properties in r/o Shri J.C. Arora, Mrs. Uma Arora Miss Shivani Arora and Mr. Gaurav Arora R/o AI/228,S.J. Enclave. New Delhi in connection of an Fir No. 114/87 under Sections 380/420/467/462 Ipc, P.S. Vinay Nagar. Sir, You are hereby directed not to transfer the above-said properties as a criminal case (above) is pending investigation with us against Shri J.C. Arora and others family members mentioned above are his dependant. The flats No. are as follows :

1. Flat No. 802 situated at 21, Bara Khamba Road.

2. Flat No. 402 situated at 14, Kasturba Gandhi Marg.

3. Flat No. 1413, situated at 38, Nehru Place.

4. Flat No. 219, 6 Bhikaji Camma Palace, New Delhi (Possession of this flat has already taken).

5. Flat No. D-2022, Palam Vibar, New Delhi. sd/- (P.S. Vinay Nagar) 2-5-87' The case has been registered against the petitioner on the basis of the complaint made on behalf of Economic Transport Organization by his partner Shri S.N. Arya. It baa been mentioned in the complaint that a bogus account has been opened by the petitioner in the name of the said firm representing himself to be sole proprietor in Punjab & Sind Bank in April, 1985 and petitioner had deposited cheques of huge amount issued by customers in favor of the said partnership firm illegally in the said account and thus it was averred that petitioner in conspiracy with others have committed the various offences under the Indian Penal Code mentioned above. The petitioner has been previously an employee of the said partnership concern. The investigation in the case is still in progress and according to the prosecution sufficient evidence has been collected show that the said partnership concern has

been defrauded about Rs. 40,00,000.00 by the petitioner by adopting the modus operandi of getting the cheques from various customers of the said partnership concern and depositing the same in bogus accounts opened by the petitioner showing himself as sole proprietor of the said firm and then withdrawing the said amounts from the bogus accounts and utilising the said funds for acquiring different properties either in his name or in the names of his close family relations.

(2) The legal question which has been raised by the learned counsel for the petitioner in seeking quashment of the aforesaid letter issued by the police is that the investments made by the petitioner and by his close family members with the Ansal Properties for booking different flats does not show that those properties show to be acquired are subject-matter of any offence having been committed by the petitioner. The learned counsel for the petitioner has argued that as a matter of fact there is no provision in the Criminal Procedure Code for issuing a letter of the type in question and moreover the property which is to be seized under Section 102 of the Code must be movable property capable of being actually seized. He has argued that the Legislative has not intended that provisions of Section 102 of the Code should apply to any immovable property.

(3) On the other hand, the learned counsel for the respondents and the intervener have contended that there is no legal bar in seizing the immovable property if it is suspected that the immovable property is the subject- matter of criminal offence having been committed. It has also been argued that the petitioner had after withdrawing the amounts from the bogus accounts transferred those amounts in different accounts and had got deposited the amounts with the Ansal Properties for booking those flats and thus under Section 102 of the Code the Investigating Officer was right in issuing the aforesaid letter. It has been argued that the word 'property' used in Section 102 of the Code is of widest import which would include the immovable property as well and the word 'seizure' used in the said provision is also of wide import to include any order being made by which the control of the immovable properties is restricted.

(4) At present assuming lor the sake of arguments that the provisions of Section 102 of the Code could apply to immovable properties or the deposits of the type

made in the present case, the question which needs decision is whether the Investigating Officer could seize the said properties while exercising the power under Section 102 of the Code which 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, is 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, 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.'

The matter is not rest integra inasmuch as a Division Bench of this Court has already interpreted the provisions of Section 102 in similar type of a case in Miss Sworn Sabharwal v. Commissioner of Police', 1987 C.C.C 505. In the said case also the case had been registered on the allegations that the accused had transferred certain funds which he had acquired by illegal means in the name of accused's wife in the bank account. The Investigating Officer had issued a letter to the Bank requiring the Bank to seize the aforesaid account, meaning thereby that accused's wife was restrained from operating the said account. The Divisional Bench in Para 6 of the judgment spoke on the subject as follows :

'BUT assuming that a bank account is 'property' within the meaning of the section, it should be property 'found under circumstances which create the suspicion of the commission of an offence' to justify action under Section 102 In other words, it applies where a police officer comes across certain property in circumstances which creates in his mind a suspicion that an offence has been committed. Thus to the cases cited by counsel action under Section 102 was upheld where a public servant was found in possession of moneys in his banks account far in excess of his known sources of income, when a person was found in possession of a large quantity of small coins for sale in contravention of defense of India Rules, where a trader was found to have stored a large number of bags of rice in contravention of rules and orders and where a person was founding standing on a public road with a bag containing several bundles of currency notes. The position here is different. Here, it is not the discovery of the properly that has created the suspicion of an offence. There are no circumstances attendant upon the bank account or its operation that have led officer to suspect that some offence has been committed somewhere. The discovery of the bank account here is a sequel to the discovery of the commission of the offence. The police suspect that some of the proceeds realised by the sale of official secrets have been passed on to the petitioner by her husband. This, we think is not sufficient to attract Section 102 as it cannot be since that the bank account has been traced or discovered in circumstances which have made the police aware of the commission of an offence.'

(5) So, it is evident that unless the discovery of the property leads to suspicion of an offence having been committed, the provision of Section 102 of the Code cannot be invoked for seizing such properly. It is evident that deposits made with the Ansal Properties for acquiring the immovable properties by the petitioner and his close family relations have not created any suspicion with regard to commission of any offence in the present case. So, on the face of it in view of the ratio laid down by Division Bench of this Court it is to be held that the Investigating Officer bad no power to issue the aforesaid letter for seizing the aforesaid properties in the manner requiring the Ansal Properties not to transfer the possession of the said properties to the petitioner or to his close family relations inasmuch as the suspicion regarding any offence being committed has not been as a result of discovery of the said deposits having been made with Ansal Properties for booking the flats. All that the police has to show by collecting evidence is that certain sum of money belonging to the complainant has been fraudulently obtained by the petitioner and petitioner had utilised those funds by either acquiring the property in his own name or in the name of his close family members. However, for the offences for which the case is registered the moment the investigation is able to collect evidence that some bogus accounts have been

opened and the cheques belonging to the complainant have been deposited in those accounts and petitioner has withdrawn those funds, the offences may be held to be made out against the petitioner The circumstance as to the sources from where the funds came to be deposited with Ansal Properties would be only necessary to be shown as a corroborative piece of evidence for proving the offence for which the case has been registered. It is not accessory to refer to various judgments cited at the Bar on the point whether the provisions of Section 102 Cr.P.C. could be invoked in respect of immovable properties or whether the word 'seizure' appearing in Section 102 of the Code would only mean the actual taking of possession of the property because the impugned letter of the Investigating Officer has to be quashed for the reasons already given above. So, I do not express any view on the other questions railed in this case.

(6) In view of the above discussion I allow the petition and quash the aforesaid letter.