



Cri. M.A. No. 262/2022
Priyanka Vs. State
CNR No. MHWS080015582022

ORDER BELOW EXHIBIT-01
(Passed on 15.10.2022)

Applicant is the doctor by profession. she completed her education. Maharashtra Medical Council is granted the Degree Certificate. Her registration number is 73692. After completion of her education, she started her practice as a Doctor. Considering the difficulty of patient in Rural area, she decided to give devotion to the patient in rural area. For that purpose, she choose a spot at village Asegaon pen, which is 20 km away from the Risod and Washim. There was no facility to the patient. If one can ill, he is required to go at Washim or Risod for medical aid.

02 She open her clinic at Asegaon Pen in the name of Poonam Clinic in property no. 358 of village Asegaon pen and started her practice. For that, Gram Panchayat also given no objection. Applicant was doing up and down from Risod. She engaged staff members for her assistance. In these days, she is pregnant. So, she went to clinic only when the call received to her from the clinic.

03 One Pavan Khanzode was one of the staff member and the reception counter duty was allotted to him. In the third week of September of 2022 one Balaji Deshmukh came in the clinic and meet the Pavan Khanzode. He asked that where is doctor. Pawan replied that due to pregnancy madam are not coming regularly, he made an attempt to contact to her, due to range problem there was no contact. On that ground, the said Balaji Deshmukh create quarrel with him and given threats that he will involved him in false case.

04 The said Balaji Deshmukh gave a false information to M.O. Risod alleging that Pavan Khanzode was running clinic as a bogus

doctor. The matter was reported to PSO Risod and on the basis of report of M.O., Risod, an offence punishable u/s 33 and 36 of The Medical Practitioner Act vide crime no. 528/2022 was register against him. He was arrested. Later on he was released on bail by Court on 01.10.2022. During investigation the premises of clinic was seal by the I.O. The applicant has no concern with the offence. But due to seal of clinic, it was difficult to her to do her practice and her income source is completely stopped and her reputation was damaged.

05 The law does not permit to I.O., to seize, attach or seal the immovable property. It is needless to say that u/s 102 and 457 of Cr.P.C seized property is required to be brought before the this Court. How the immovable property will be brought. In the present crime I.O., exceed his power and illegally sealed the clinic of applicant which is not permitted in the law. I.O., is only investigator and not arbitrator or decision maker. I.O. cannot take the law in her hand as a civil court though I.O. has a knowledge that immovable property cannot be seize or seal even then with ill intention, she seal the clinic of the applicant against the provision of law. Under this circumstances, it is necessary to take the legal action against I.O. for his using illegal extra jurisdiction of investigation.

06 When the case put before me. I heard learned advocate for applicant. Considering the nature of application, I made a court query to them about the tenability of this application. They replied that, the relevant citations are attached in the supurthnama application i.e. Cri. M.A. no. 257/2022, by which, the I.O. is not empowered to seal or seized the immovable property. Thus I. O. made contempt. Hence they prayed for taking legal action against the I.O.

07 Accordingly this matter is kept today. Today the Cri. M.A. no. 257/2022 is also pending on board for passing order. Perusal of

Cri. M.A. no. 257/2022 reveals that present applicant prayed for releasing her clinic. In which they placed reliance on the Judgment of Hon'ble Bombay High Court in **Satpal Singh Bachan Singh Nagul and Anr. V/s State of Maharashtra and Anr. 2019 ALL MR (Cri) 4237** stating that investigating officer has no power to seize immovable property. They also relied upon **Nevada Properties Pvt. Ltd. through Directors V/s State of Maharashtra and Anr 2020 Cri L.J. 308** stating that the word any property in the section 102 (1) of the Cr.P.C. does not include immovable property. The police officer investigating criminal case cannot attach, seized and seal any immovable property found under suspicious circumstances. They also relied upon **Sudhir Vasant Karnataki V/s State of Maharashtra 2011 ALL MR (Cri) 96** stating that the police officer can not take control of immovable property, which may be found under suspicious circumstances of the commission of any offences. The words any property used in section 102 (1) of the Cr.P.C. does not include immovable property.

08 After hearing to both the parties, today, I have passed a detailed order below exh. 01 in Cri. M.A. no. 257/2022. considering the remand papers and case diary it reveals that the action was taken by committee and the police only assist them. The alleged Poonam clinic is sealed by Dr. Shri Bele (THO). Upon on-line complaint dated 14.08.2022, the Collector Washim directed the District Health Officer to take proper action, who further directed the committee to take proper action for searching bogus doctor. Accordingly, Dr. R.P. Bele approached to the police station and took their assistance. On dated 28.09.2022, the raid was conducted by Dr. Shri R. P. Bele Taluka Health Officer who is accompanied by Health officer Shri J. U. Umale and Drug Officer Shri P. A. Nagalkar. They took help of police staff.

They found accused at the alleged clinic along with alleged objectionable material. The applicant Dr Priyanka was not present there. Accordingly the seizure of medical articles like injunction and drugs were seized. Dr. Shri R. P. Bele Taluka Health Officer, himself lodged report against accused.

09 No doubt, that the I.O. is not empowered to seal, seized and attached immovable property as per section 102(1) of the Cr.P.C. But the record reveals that informant Dr. Shri R. P. Bele Taluka Health Officer again visited the alleged clinic along with panch and police staff along-with I.O. The informant after observation of the clinic sealed it and put his signature on seal. Then the panch and I.O. put their signature on it. It also reveals that Dr. Shri R. P. Bele Taluka Health Officer does not have its own seal. So he requested police for using their seal. Thus it prima facie appears that the seal of the Poonam Clinic was made by Dr. Shri R. P. Bele Taluka Health Officer.

10 It also reveals that by the government resolution dated 07.02.2000 the district level committee was reconstructed for effective implementation of finding out bogus doctors and taking actions against them. It also reveals that by the government resolution dated 05.02.2003, various committees were formed at District level, Taluka Level, Municial Corporation level and Muncipal Council level for taking effective actions against bogus doctors. The informant in this case Dr. Shri R. P. Bele is Taluka Health Officer and member secretary of the committee. Moreover, Health officer Shri J. U. Umale is also a secretary of the committee. The Govt. resolution dated 05.02.2003 also reveals that for eradicating unauthorized medical practice, necessary changes were made in section 33, 33A and 38 of the Maharashtra Medical Practitioners Act 1961 and its punishment is also enhanced.

11 As per section 38 of Maharashtra Medical Practitioner Act 1961, all offences are cognizable and non bailable. It is a Special Act. Considering the nature of offence and the accused Pawan caught red handed and did not gave satisfactory answer or produced necessary documents, he was taken into custody. On the other hand, this application reveals that, the accused is alleged to be compounder of applicant. Hence, there is some nexus between applicant and accused. In spite of this, the applicant did not came forward and co-operate in the investigation. It appears that, the reasonable complaint has been made upon credible information and there is reasonable suspicion exist for commission of cognizable offence. Moreover, the alleged offence is against the life, safety and health of general public.

12 Hence, considering above discussion, it prima facie appears that the seal of Clinic in this case is not made by I.O. The action was initiated and Poonam Clinic is sealed by the informant Dr. Shri R. P. Bele who is Taluka Health Officer and member secretary of the committee. Moreover, the citations relied by learned advocate nowhere stated about taking legal action against the I.O. In those judgments also no any action of contempt of court was taken. Hence, the citations relied by the learned advocate for applicant is with due respect of all the citations, according to my opinion is not found to be applicable to the case in hand. Considering all above circumstances, I pass following order.

ORDER

The application is hereby rejected.

Sd/-

(Y.D. Koinkar)

Judicial Magistrate (F.C.),
Risod

Date : 15.10.2022

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same word to word, as per the original Judgment/Order.

Name of the Stenographer : Rohit D. Pandit (Stenographer L.G.)

Name of court : C.J.J.D.& JMFC;Risod

Date : 15.10.2022

Judgment/Order signed by the
Presiding Officer : 15.10.2022

Judgment/Order uploaded on : 17.10.2022