ABC 2019 (I) 288 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Mridula Bhatkar, J.)

Criminal Revision Application No. 631 of 2018

Decided on 9 January, 2019

DR. SUHAS SAMPAT JADHAVAR & ANR. ***- Appellant(s).***

Versus

THE MEDICAL SUPERINTENDENT & ANR. ***- Respondent(s).***

Law Covered:- ***Code of Criminal Procedure, 1973 — Section 102 — Indian Penal Code, 1860 — Sections 312, 315 & 201 r/w. 34— Medical Termination of Pregnancy Act, 1971—Section 5—Sealing of premises — Held, the immovable property cannot be seized u/s 102, Code of Criminal Procedure, 1973 — there is no provision to seal any immovable property — premises unsealed & handed over to the applicants. (Para 5)***

Law of relief:- ***Immovable property cannot be seized u/s 102, CrPC.***

Held:- Thus, there is no provision to seal any immovable property. Hence, the order passed by the learned Sessions Judge is hereby quashed and set aside and the said premises is unsealed and is to be handed over to the applicants. (Para-5)

Counsel:- ***For Appellant(s):*** *Mr. V.S. Talkute, Adv.*

For Respondent(s): *Mr. Vinod Chate, Adv.*

Cases Referred:-

Sudhir Vasant Karnataki & Ors. vs. The State of Maharashtra & Ors., (Para-2)

JUDGMENT

Mrs. MRIDULA BHATKAR, J.: - 1. In this Criminal Revision Application, the judgment and order dated 24th October, 2018 passed by the learned Sessions Court, Pandharpur below Exhibit 11 in Sessions Case No. 30 of 2018 to remove the seal of the premises, i.e., two rooms, which were seized is challenged.

2. The learned counsel for the applicants has submitted that the applicants are medical practitioners by profession, however, they are facing prosecution under sections 312, 315, 201 r/w. 34 of Indian

Penal Code and under section 5 of Medical Termination of Pregnancy Act, 1971 under FIR No. 114 of 2018 registered with Sangola Police Station, District Solapur. The learned counsel has submitted that pursuant to the said FIR, the case was registered on 8th February, 2018 and under panchnama dated 8th February, 2018, the premises where the applicants were practicing were sealed by the authority. The learned counsel has submitted that the applicants are not the owners of the said premises but the premises are taken on leave and licence basis and the applicants want to return the said property to the landlord. The learned counsel further submitted that there is no provision under the law to seal the premises when the person is prosecuted under sections 312, 315, 201 and also under section 5 of Medical Termination of Pregnancy Act, 1971. He submitted that there is no provision of seizure and sealing immovable property under Code of Criminal Procedure. He relied on the judgment of Full Bench of Bombay High Court in the case of ***Sudhir Vasant Karnataki & Ors. vs. The State of Maharashtra & Ors.*** decided on 29th November, 2010 in Criminal Writ Petition Nos. 2024, 3198 of 2009 and 395 and 2137 of 2010. The learned counsel has further submitted that the applicants were granted bail by the order dated 4th June, 2018 of this Court. By the said order, restriction is placed on the applicant No. 2 that she will not practice in Medicines in any firm or at any place till the conclusion of the trial. He submitted that the said premises is to be returned to the landlord and therefore, it is to be unsealed.

3. Learned APP submits to the order of the Court.

4. Considered the submissions. In the case of **Sudhir Vasant Karnataki & Ors.** *(supra),* the Full Bench has held that the immovable property cannot be seized under section 102 of Criminal Procedure Code.

5. Thus, there is no provision to seal any immovable property. Hence, the order passed by the learned Sessions Judge is hereby quashed and set aside and the said premises is unsealed and is to be handed over to the applicants.

6. Criminal Revision Application is allowed.

Result:- Criminal Revision Application allowed.
