

GAHC030003522020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./17/2020

- 1. Shri Rosangliana Hmar,**
S/o Lalhmingthanga (L),
R/o Dawrpui, Aizawl, Mizoram.
- 2. Smt. Rosie Vanneihpuii,**
W/o Shri Rosangliana Hmar,
R/o Dawrpui, Aizawl, Mizoram.
- 3. Smti. Kuri Lalringthangi Hmar,**
D/o Shri Rosangliana Hmar,
R/o Dawrpui, Aizawl, Mizoram.

....Appellants

-VERSUS-

- 1. The State of Mizoram, represented by**
The Chief Secretary to the Government of
Mizoram, Aizawl.
- 2. The Secretary to the Government of Mizoram,**
Finance Department, Mizoram, Aizawl.
- 3. The Secretary to the Government of Mizoram,**
Home Department, Mizoram, Aizawl.
- 4. The Deputy Commissioner,**

Aizawl District, Aizawl, Mizoram.

5. The Superintendent of Police,
CID (Crime), Mizoram, Aizawl.

....RESPONDENTS

Criminal Appeal 18/2020

1. **Shri Lalrinzuala,**
S/o Rosangliana Hmar
R/o Dawrpui, Aizawl, Mizoram.

....Appellant

-VERSUS-

1. The State of Mizoram, represented by
The Chief Secretary to the Government of
Mizoram, Aizawl.
2. The Secretary to the Government of Mizoram,
Finance Department, Mizoram, Aizawl.
3. The Secretary to the Government of Mizoram,
Home Department, Mizoram, Aizawl.
4. The Deputy Commissioner,
Aizawl District, Aizawl, Mizoram.
5. The Superintendent of Police,
CID (Crime), Mizoram, Aizawl.

....RESPONDENTS

Criminal Appeal 13/2021

1. Shri Vanlalfelpuia Royte,
S/o Robert Romawia Royte,
R/o H. No. M2/21,
Chhinga Veng, Aizawl, Mizoram.

....Appellant

-VERSUS-

- 1. The Deputy Commissioner,**
Aizawl District, Mizoram
- 2. Shri Lalrinzuala,**
S/o Rosangliana Hmar
R/o Dawrpui, Aizawl, Mizoram.
- 3. Smt. Rosie Vanneihpuii,**
W/o Shri Rosangliana Hmar,
R/o Dawrpui, Aizawl, Mizoram.
- 4. Shri Lalrinsanga,**
S/o Rosangliana Hmar
R/o Dawrpui, Aizawl, Mizoram
- 5. Smti. Kuri Lalrinthangi Hmar,**
D/o Rosangliana Hmar
R/o Dawrpui, Aizawl, Mizoram
- 6. Shri Rosangliana,**
S/o Lalhmingthanga (L),
R/o Dawrpui, Aizawl, Mizoram

....RESPONDENTS

Advocate for the appellants : Mr. B. Lalramenga, Adv.

Mr. Lalfakawma, Adv.

Advocate for the respondent : Ms. Linda L. Fambawl, Addl.
P.P. assisted by Mr. F. Lalenglina.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 15.03.2024
Date of Judgment & Order : 21.03.2024

COMMON JUDGMENT & ORDER (CAV)

Heard Mr. B. Lalramenga, learned counsel for the appellants in Criminal Appeal No. 17/2020 and Criminal Appeal No. 18/2020. Also heard Mr. Lalfakawma, learned counsel for the appellant in Criminal Appeal No.13/2021 as well as Ms. Linda L. Fambawl, learned Additional Public Prosecutor for the State of Mizoram assisted by Mr. F. Lalenglina, learned counsel appearing on behalf of the Distributors.

2. These appeals are filed under Section 16 of the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2019 (in short 'MPIDFE Act') challenging the impugned Judgment & Order dated 05.10.2020 passed by the learned Additional District & Sessions Judge, Aizawl, in MPID Case No. 81/2015, wherein, an ad interim Attachment Orders dated 22.11.2016 and 16.06.2017 passed by the respondent No.2 had been made absolute.

3. The brief facts leading to filing of the appeals is that;

3.1. On 22.11.2016 and 16.06.2017, the Government of Mizoram, Financial

Department passed *ad-interim* Attachment orders of the money and properties of the respondents/present appellants in MPID Case No.81/2015 under Section 3 of the MPIDFE Act, 2002. On that basis, the complainant, an enquiry was conducted by the competent authority and filed an application before the Court of learned District Judge with a prayer to make the *ad-interim* Attachment orders as absolute. Initially the Money Suit No. 81/2013 was filed by one Mr. Sangkunga Pautu for himself and also represented another 211 numbers of persons who allegedly made the deposits to the appellant No.1's son Shri Lalrinzuala and accordingly, they claimed for a payment of Rs.8,58,39,427/- (Rupees Eight crore fifty-eight lakhs thirty-nine thousand four hundred and twenty-seven) only to them with interest. While, the Money Suit No.81/2013 was pending before the Court of learned Civil Judge (Sr. Division), Aizawl, it was transferred to the Court of learned District & Sessions Judge, Aizawl Judicial District, in pursuance of the decision of the Gauhati High Court in RFA No.36/2012 [*Smti. Hualthanmawii & 110 Ors. Vs. Kaprivunga, Managing Director, Mizoram Finance Consultancy Services Ltd.*] and also as per Section 6(2) of the MPIDFE Act, 2002.

3.2. Thereafter, on receipt of the transferred Money Suit No.81/2013, the learned District & Sessions Judge, Aizawl passed the order dated 14.09.2015, thereby, directing the Superintendent of Police, CID (Crime) to investigate the case and to take action as per the MPIDFE Act, 2002. After completion of the investigation, an *ad-interim* Attachment orders dated 22.11.2016 and 16.06.2017 were passed by the Secretary to the Government of Mizoram Finance Department as per Section 3(2) (b) of the MPIDFE Act, 2002. Subsequently, as per Section 4(3) of MPIDFE Act, 2002, the Competent Authority i.e. the Deputy Commissioner, Aizawl submitted an application dated

29.06.2017 before the learned District & Sessions Judge, Aizawl praying for making absolute the *ad-interim* Attachment orders absolute dated 22.11.2016 and dated 16.06.2017 respectively.

3.3. The appellant's No.2 namely Smti. Rosie Vanneihpuii (Crl.A. No.17/2020) has submitted an objection against the prayer of the respondent stating that there can be no reasons to make attachment order of properties of other family members of Shri Lalrinzuala (appellant in Crl.A.No.18/2020) and accordingly she also claimed for ownership of the attached properties.

3.4. One Shri Lalrinsanga (respondent No.4 in Crl.A.13/2021) also submitted an objection to that effect which has been registered as CMA No.667/2017 claiming that the attachment order of the properties covered by LSC No.G-203 of 1987 belongs to him and the same is not the property of Shri Lalrinzuala (appellant in Crl.A.No.18/2020). A similar claim has been made by Smti. Kuri Lalrinthangi Hmar (appellant No.3 in Crl.A.No.17/2020) registered as CMA No.668/2017. Further, Shri Rosangliana Hmar (appellant No.1 in Crl.A.No.17/2020) in CMA No.669/2017 filed written objections claiming ownership of some of attached properties. Thus, all the miscellaneous applications No. 666, 667, 668 and 669 are amalgamated with the main MPID Case No. 81/2015 as per orders dated 29.09.2022 in their respective cases.

3.5. The learned District & Sessions Judge has submitted the entire lists of the properties claimed by Shri Rosangliana Hmar (appellant No.1 in Crl.A.No.17/2020) in the judgment and order passed by the Court. After, recording the evidences of PWs as well as DWs and all other documents furnished along with their respective claims, the learned District Judge held that *ad-interim* Attachment orders dated 22.11.2016 and 16.06.2017 passed by the

Government of Mizoram Finance Department is fit to be attached and accordingly, the *ad-interim* Attachment orders in respect of the landed property and the bank account attached by the Government of Mizoram Finance Department dated 22.11.2016 and 16.06.2017 are made absolute except the properties of Shri Lalrinsanga in respect of LSC No.G-203 of 1987; also passed the order for equitable distribution of the deposited amounts to the depositors, at the rate and ratio of the principle amount due, and with a further direction that the disbursement will be made to 244 numbers of depositors as per investigation report submitted to the Finance Department, Government of Mizoram with 12% of interest of the deposited amount per annum. It is further observed by the learned District Judge, Aizawl that in case of excess amount on liability to pay the depositors from the value of attach properties and remaining excess amount will be given back to the P & Sons establishment for the sake of justice, equity and good concerns.

4. On being highly aggrieved and dissatisfied with the impugned judgment and order dated 05.10.2020, passed by the learned District Judge, Aizawl in MPID Case No. 81/2015, the present appeals has been preferred by the appellants.

Criminal Appeal No.17/2020

5. The grounds taken in the present appeal is that;

5.1. An *ad-interim* Attachment orders dated 22.11.2016 and 16.06.2017 were baseless and those were passed without any evidence to come to a conclusion that the properties procured in the name of Shri Lalrinzuala (appellant in Crl.A.No.18/2020) or in the name of any other appellants herein, from the

money which were allegedly received from the depositors. In fact, there is no iota of evidence collected by the investigating officer as to how such properties were procured by the present appellants or whether the properties were procured from the money allegedly collected by the appellant in Criminal Appeal No.18/2020.

5.2. Further, the evidences on record also substantiated the fact that the properties of the present appellants were not procured out of the deposits allegedly collected by Shri Lalrinzuala/appellant (Crl.A.18/2022). The registration numbers of the LSC's also prima facie reveals that such property were procured by the appellant prior to the year 2009 since when, the depositors allegedly started making their deposits to the said Lalrinzuala. The list of the property of the appellant No.1/Shri Rosangliana Hmar in the instant appeal is also annexed along with the present appeal memo to show that most of the properties were procured by him and there is also specifically mentioned about the properties of the appellant No.2/Smti. Rosie Vanneihphii, and further it is submitted that the appellant No.3 namely Smti. Kuri Lalrinthangi Hmar (daughter of the appellant No.1) is the owner of the Agriculture Land Settlement No.130/2006.

6. Mr. B. Lalramenga, learned counsel for the appellants has submitted that all the properties mentioned above have been procured prior to the registration of said MPID Case No. 81/2015. He further submits that there is no evidence to show the involvement of the present appellants in the allegation brought against Shri Lalrinzuala for receiving the deposits procured from various depositors. Further, the appellant No.1/Shri Rosangliana Hmar signed the undertaking on 14.05.2010 only admitting the liability to return the deposits on behalf of his son Shri Lalrinzuala and it is also evident from the evidence that he had signed the

said agreement only under threat and coercion. Subsequently, he also challenged the said undertaking by filing a counter claim under Order 8 Rule 6(a) of CPC in Money Suit No.81/2013, but, while dealing with the MPID Case No. 81/2015 the learned Court below did not consider the counter claim filed by the present appellant No.1. It is further submitted that all the documents upon which the claimant/depositors have relied upon their cases were also not exhibited during the trial, which is mandatory and should have been exhibited by the respondents before the learned District Judge while dealing with the MPID Case No. 81/2015.

7. Further, it has been wrongly declared that Shri Lalrinzuala as the proprietor of P & Sons, while, passing the *ad-interim* Attachment orders, as the appellant No.1 of the present appeal is the proprietor of said P & Sons and thus, the entire property of said P & Sons cannot be attached only against the claim made by the depositors against Shri. Lalrinzuala, while, filing their Money Suit No. 81/2013. The learned counsel for the appellants further submitted that the application filed by the respondents under Section 4 (3) of the MPIDFE Act, 2002 did not comply with the mandatory requirement as per the Section 4 (4) of the said Act and on the basis of which itself the learned Trial Court ought to have rejected the prayer for making the *ad-interim* Attachment orders absolute. But, the learned Trial Court did not consider all this facts and circumstances of this case and only on the basis of the report obtained through the investigating officer had made the *ad-interim* Attachment orders as absolute vide judgment and order dated 05.10.2020 passed by the learned Additional District & Sessions Judge Aizawl in MPID Case No. 81/2015.

8. Mr. B. Lalramenga, learned counsel for the appellants also stressed on the

point that most of the properties of the appellants which were attached by the State respondent were procured prior to 2006/2009 and since when, it was alleged that the depositors have made their deposits to Shri Lalrinzuala (appellant in CrI.A.18/2020) and also submitted in detail, the description of the property, where from it is shown that most of the LSC's of the appellants were prior to 2006/2009. He further submits that the respondents could not collect any evidence to prove that the present appellants are the manager, member or protector of the financial institution, wherein, the depositors were allegedly deposited their money. He also submits that from the evidence of the PWs also, it is seen that they were not aware of the fact that the appellant No.1 of the present appeal is the proprietor of P & Sons and not Mr. Lalrinzuala with whom the depositors alleged to have been deposited their money considering it to be a financial institution.

9. Further, the present appellant No.1 also adduced his evidences in connection with this case, wherein, it has been clearly stated that he is the proprietor of the P & Sons and the properties of said P & Sons were included in the list of properties attached, which is not legally tenable as there was no allegation against the present appellant No.1 of receiving any money from the depositors in the name of P & Sons. Further, he also submits that from the evidences of PWs, it is also seen that most of the deposits were being made since 2009 and some of the deposits were also being made from 2006, but, most the properties of the P & Sons and present appellants were procured by them prior to 2006. But, without considering all this aspect of the case, most of the properties of the appellants as well as the properties under P & Sons were attached by the State respondent and vide the impugned judgment & order dated 05.10.2020 passed in MPID Case No. 81/2015, the *ad-interim* attachment

Orders were made absolute. Thus, the same is liable to be set aside and quashed.

10. The learned counsel for the appellants further submitted that the documents were also not proved, which were submitted by the depositors before the learned Civil Judge (Sr. Division) in the case of Money Suit No.81/2013 and without any proof of the said documents those were accepted by the learned District Judge, while passing the impugned judgment & order dated 05.10.2020.

11. In addition to his submission, the learned counsel for the appellants relies on a decision passed by the Hon'ble Supreme Court in the case of ***Vijay vs. Union of India*** reported in **2023 Livelaw (SC) 1022**, wherein, he mainly stressed on paragraph No.33 of the said judgment which read as under;

“33. After perusing various judgments of this Court, we can deduce the following principles relevant for examining the admissibility of secondary evidence:

33.1 Law requires the best evidence to be given first, that is, primary evidence.

33.2 Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence.

33.3 If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given.

33.4 A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party.”

12. In support of his submission, Mr. B. Lalramenga, learned counsel for the appellants also relies on another decision passed by the Hon'ble Apex Court

reported in **(2001) 1 SCC 691 [M. Narsinga Rao vs. State of A.P]**, wherein, he mainly emphasized on paragraph No. 15 of the said judgment which read as under;

“15.The word proof need be understood in the sense in which it is defined in the [Evidence Act](#) because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the [Evidence Act](#). What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. [1911 (1) K.B. 988] observed like this:

“Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion”.

13. The learned counsel for the appellants further raised the issue of non-compliance of the provision under Section 4 (4) of the Act, 2002 and in that regard also he relied on the decision passed by the Hon’ble Andhra Pradesh High Court in ***Criminal Appeal No.1045/2014 dated 03.03.2015***.

Criminal Appeal No.18/2020

14. In the instant appeal, the grounds taken by the appellant is that; the *ad-interim* Attachment orders dated 22.11.2016 and 16.06.2017 were baseless and they were passed without any evidence to come into a conclusion that the properties being attached were procured in the name of the present appellant from the deposits which were allegedly received from the depositors. But, there is no iota of evidence that such properties was procured by the present appellant from the money collected by him allegedly from the depositors. In the

present case, there is no reason for attachment of the properties of the appellant for the fact that this property were not procured from or out of the deposits allegedly collected by him. The registration number of attached LSC's will prima facie reveals that such allotment made in his favour were made prior to the year of 2009, when the depositors allegedly started making deposits to the appellant. Hence there cannot be any question of procurement of the above mentioned properties of the appellant from or out of the deposits.

15. It is further submitted by the learned counsel for the appellant that there is no reason to believe that the appellant had acted in a calculated manner with an intention to defraud the depositors or there is no evidence to say that he is not likely to return the deposits. Rather, the appellant had already returned some deposits to the depositors and this in fact is substantiated by all the receipts which he annexed along with his written statement submitted in the Money Suit No.81/2013. Thus, there was no fraud being played by the appellant as the depositors had made deal/agreement with the appellant and while, the appellant was returning the amount to the depositors in a piecemeal manner. More so, the documents on basis of which the claimants/depositors claimed their money under the Money Suit No.81/2013 are also not exhibited or prove during the evidence which is a mandatory provision and cannot be ignored. In the same time, the documents which were relied by the present appellant while filing his written statement in Money Suit No. 81/2013 were also not considered by the trial Court while passing the judgment and order dated 05.10.2020 in MPID Case No.81/2015.

16. In the instant appeal also, the application filed under Section 4 (3) of the 2002 Act, by the respondent No.4/Deputy Commissioner did not comply with

the mandatory requirement as mentioned in Section 4 (4) of MPIDFE Act, 2002, and on the said ground also the trial Court ought to have rejected the prayer to make the attachment orders as absolute. In the instant appeal also, the learned counsel for the appellant also relied on LSC's where from it is seen that most of the lands were settled in the name of the appellant prior to 2006/2009, since when the depositors allegedly deposit their money with the present appellant.

17. In case of the present appeal also, the learned counsel for the appellant relied on the same judgment as mentioned above in the case of Criminal Appeal No.17/2020 of the Hon'ble Apex Court regarding the prove of the documents. He further submits that there is no deliberate negligence or intention to defraud the depositors and he already returned some amount of money to some of the depositors and also has the intention to return the money to the other depositors also. He further submitted that earlier 327 numbers of the plaintiffs filed a money suit being numbered as Money Suit No.73/2011 for claiming for more than Rs.13 crores of money. But, the said Money Suit was withdrawn by some of the depositors and subsequently the Money Suit No.81/2013 was filed by 211 numbers of plaintiffs for claiming an amount which is more than Rupees eight Crore which otherwise establishes that the present appellant have already returned the money to 116 numbers of depositors and thus, they had withdrawn their claim and the subsequent Money Suit was filed only by 211 numbers of the plaintiffs.

18. He further submits that Section 3(2) (ii) (b) of the Act, read as under;

“(b) Where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, the Government

may in order to protect the interests of the depositors of such Financial Establishment, passed an ad- interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment, or in the name of any other persons from and out of the deposit collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, manager or member of the said Financial Establishment as the Government may think fit and transfer the control over the said money or properties to the Competent Authority.”

19. But, here in the instant case from the conduct of the present appellant, it is seen that appellant had already returned the money to 116 numbers of the depositors and for which they have already withdrawn their claim and thus, it is very well establish that there was no intention to defraud the depositors and thus, it was not required to pass any orders of ad-interim Attachment by the Government. The learned counsel for the appellant further submits that one of the depositor namely Shri P. Manliana in his cross examination have admitted that the deposits were made with the present appellant only since 2009 and he is also aware of the fact that Shri Rosangliana Hmar (appellant No.1 in CrI.A. No.17/2020) is the proprietor of P & Sons and not the present appellant. Another depositors also stated in his cross evidence that the deposits were made since the year 2006, but, the lists of the properties which has been annexed by the Government is procured or made by the present appellant prior to 2006/2009 and thus, it cannot be claimed that the properties are procured out of deposits made by the depositors.

20. Mr. B. Lalramenga, the learned counsel for the appellant further submits that present appellant/Mr. Lalrinzuala/appellant is not the proprietor of said P & Sons and thus, the Government had passed the ad-interim Attachment Orders

illegally and which also made absolute by the learned District Judge vide its impugned judgment & order dated 05.10.2020 which is not at all tenable and hence, the same is liable to be set aside. Further, it is submitted by the learned counsel for the appellant that the present appellant is still ready and willing to return the deposited money to the depositors, however, it is denied that it was deposited under the P & Sons, though most of the properties belonging to P & Sons, were already being attached by the State. Accordingly, it is submitted that it is a fit case wherein the judgment and order dated 05.10.2020 passed by the learned District Judge in MPID Case No.81/2015 is liable to be set aside and prays to release the said properties.

Criminal Appeal No. 13/2021

21. In the present appeal the ground taken by the learned counsel for the appellant is that in pursuant to the judgment and order dated 5.10.2020 passed by the learned District Judge in MPID Case No.81/2015, the properties of Shri Rosangliana Hmar was attached by the *ad interim* Attachment orders which was made absolute by the said Court. The property in respect of LSC No. 161/2022, reveals that the same was purchased/owned by said Shri Rosangliana Hmar in the year 2002. And, from the judgment and order dated 05.10.2020 in paragraph No.18, it is seen that the deposits were made to Shri Lalrinzuala in the year 2009. Thus, even assuming but not admitting that Shri Rosangliana Hmar had received the deposits from the individuals along with Shri Lanrinzuala, and in that case also, it is crystal clear that the property of Shri Rosangliana Hmar particularly covered by LSC No.161/2002 cannot be said to be the property procured by Shri Rosangliana Hmar from and out of deposit collected from individuals.

22. But, the learned Trial Court erred in passing the judgment & order dated 05.10.2022 inasmuch the property of Shri Rosangliana Hmar/respondent No.6 is concerned particularly covered by LAC No.161/2002. The trial Court had attached the properties of Shri Rosangliana Hmar/respondent No. 6 along with that of respondent Nos. 3 and 5 merely on the ground that the said respondents are living under the same roof as the respondent No.2. Thus, the decision of the learned Trial Court below which includes the properties of the said respondent in its judgment and order dated 5.10.2020 for attachment of the properties is arbitrarily, baseless and same is liable to be set aside and thus, interference of this Court to the judgment and order dated 5.10.2020 particularly in respect of LSC No. 161/2002 is concerned.

23. The learned Trial Court also observed in paragraph No. 16 of the said judgment which read as under;

“16. Mr. Stephen Lalrinawma, the then Addl. SP CID (Crime) examined as PW-1 narrated their mode of investigation and findings thereof. During cross-examination, he stated that almost all the deposits made by the depositors were received by Mr. Lalrinzuala, he also admitted that attached properties were acquired by the family of Mr. Lalrinzuala before receiving deposits. PW-2 Mr. V. Lalbiaksanga, Inspector of Police and a member of SIT also corroborated statement of PW-1.”

24. He further submits that from the deposition made by the other PWs also, it is seen that Mr. Lalrinzuala and other family members started accepting deposits as per the agreement made with Mr. Lalrinzuala and they also started making their deposit only from the year 2009. And from the cross evidence of the PW-3 also, it is seen that the agreement regarding the deposits were signed by Mr. Lalrinzuala and other respondent No.3/Smti. Vanniehpuui also had signed only 2 agreements with the depositors. Thus, it is a factual situation and the question of attaching the properties of the respondent No. 6 i.e. Shri Rosangliana who

had no dealing whatsoever with the depositors and who had not executed any agreement. Thus, the learned Trial Court erred in attaching the properties of respondent No.6/ Rosangliana and as such the judgment and order dated 5.10.2020 is liable to be interfered with.

25. It is also submitted that the present appellant is a bonafide purchaser of land in respect of LSC No.161/2002 and he has no connection with any depositors and the said property was purchased by the respondent No.6/ Rosangliana in the year 2002 and hence it cannot be held that the said property of respondent No.6 was purchased out of the deposit made by the depositors and accordingly, by instant appeal, it is prayed for interference of this Court to modify the judgment and order dated 5.10.2020 passed in MPID Case No.81/2015 to the extent that the Court may be pleased to strike out the property covered by LSC No.161/2002 from the judgment and order dated 5.10.2020 and may direct to release the properties or may direct the respondent No.6 to deposit an amount of Rs. 1 crore paid by the appellant to the respondent No.6 as a consideration for purchase of the property covered by LSC No.161/2002. He further submits that unless there is any interference or modification of the judgment and order passed by the learned District Judge, the same will cause irreparable loss and injury to the present appellant.

26. The appellant also filed the copies of the sell deed and the certificate of land settlement and residential land settlement certificate issued in favour of the present appellant as well as non incumbent certificate, no objection certificate and valuation certificate of the land purchased by the appellant from the respondent No.6, Mr. Rosangliana. Accordingly, it is submitted by the learned counsel for the appellant that he is not connected with any deposits made by

the depositors under Shri Lalrinzuala or other family members, but, he purchased the land on a *bonafide* belief and after obtaining the no objection certificate and other relevant land documents, he purchased the land from the respondent No.6. But, vide judgment and order dated 5.10.2020 passed by the learned District Judge, the land which was purchased by him as a *bonafide* purchaser also attached in connection with MPID Case No.81/2015, and thus, the interference of this Court is necessary to modify the judgment in respect of the property purchased by him under LSC No. 161/2002 in the name of Mr. Rosangliana/respondent No.6.

27. Ms. Linda, learned Additional Public Prosecutor has submitted in regards to all the appeals that the learned Trial Court rightly passed the judgment & order dated 05.10.2020 in MPID Case No. 81/2015 by making the *ad-interim* Attachment orders as absolute. She further submits that initially the money suit was filed by the depositors which was registered as Money Suit No.81/2013 and the same was transferred to the Court of learned District & Sessions Judge in compliance of provision of Section 6 (1) & (2) of the Act which was subsequently registered as MPID Case No.81/2015 and further, the case was also investigated by the investigation agency mainly by the CID and after considering the said report only, the ad interim Attachment orders was passed.

28. She further submits that from the deposition made by the witnesses, it is seen that the whole family members are involved in the said business, though, Shri. Lalrinzuala, the appellant in Criminal Appeal No.18/2020 is mainly looking after the business. She mainly stressed on the evidence of PW-6 who specifically stated in his evidence that the financial institution namely P & sons are being run by the family's of Mr. Rosangliana as a family business and therefore, the

investigating agency made the lists of the properties which was reported before the competent authority which include the LSC's Patta, building, vehicle, bank account belonging to the family members of P & Sons living under the same roof. Another PW-3 namely Sangkunga Pautu who filed the money suit under the representative capacity representing 210 numbers of depositors also deposited money with P & Sons through Shri Lalrinzuala son of Shri Rosangliana/appellant No.1 (Criminal appeal No.17/2020). Further, he deposed that Shri Rosangliana claims himself to be the proprietor of P & sons, but, the said name and style was used by all the family members including Shri Rosangliana as well as his son Lalrinzuala, while, collecting the money from the depositors.

29. From the evidence it also revealed that Shri Lalrinzuala and his father Rosangliana respectively are staying under the same roof and he has not establish any separate establishment and the entire business was carried out in the name and style of P & sons where Shri Lalrinzuala along with the other family members namely Rosangliana, Smti. Rosie Vanneihpuii and Smti. Kuri Lalrinthangi Hmar who are the father, mother and sister of Shri Lalrinzuala and they all knew about the *ad-interim* Attachment orders as soon as the notice was received by Shri Lalrinzuala; as they all are staying under the same roof and also involved in the same family business. The witnesses further deposed that the depositors have deposited the money only because of the name of P & Sons, otherwise, nobody would have deposited the money to Shri Lalrinzuala. From evidences of PWs it is also seen that Smti. Rosie Vanneihpuii and Smti. Kuri Lalrinthangi Hmar also received deposits from some of the depositors and this proves that all the family members were involved in receiving deposits from the depositors under the name and style of P & Sons.

30. The learned Additional Public Prosecutor further submits that whether the property acquired before or after the deposits is immaterial, and, the Government can attach the property of the financial establishment or the promoter, manager or member of the said establishment only to satisfy the claim of the depositors.

31. Section 3 (2) (ii) (b) which as under:-

“(b) Where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, the Government may in order to protect the interests of the depositors of such Financial Establishment, passed an ad- interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment, or in the name of any other persons from and out of the deposit collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, manager or member of the said Financial Establishment as the Government may think fit and transfer the control over the said money or properties to the Competent Authority.”

32. The learned Additional Public Prosecutor further submitted that the concerned authority also filed an affidavit accompanied with the application as per Section 4 (4) of the Act, while making the prayer for *ad interim* Attachment orders as absolute. She further submitted the necessary documents were also exhibited by the prosecutions in respect of the properties of P & Sons including the vehicle, firm, bank account as well as agricultural land.

33. In regards to the issue raised by the learned counsel for the appellant for filing of the affidavit by the competent authority, she relied on a decision passed

by the Hon'ble Supreme Court reported in **1996 (6) SCC 660 [United Bank of India vs. Naresh Kumar & Others]**, wherein, it has been held that "substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable" and accordingly, she emphasized mainly on paragraph No.9 of the said judgment which read as under;

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under [the Code of Civil Procedure](#), to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

34. The learned Additional Public Prosecutor submitted that in regard to Criminal appeal No.13/2021 that the judgment and order was passed on 5.10.2020 and the present appeal was filed only on 23.08.2021, though, as per Section 11 of the Act, 2002, the appeals should have been filed within 30 days from the date of order, if anyone is aggrieved by the order. But, here in the instant case, it is seen that the appeal was filed about almost 1 year later, and thus, she submits that on the ground of limitation itself the instant appeal should be dismissed. She further submits that the property was purchased by the appellant in Criminal Appeal No.13/2021 without making any verification which is mandatorily required before purchasing the property.

35. In this context, the learned counsel for the appellant in appeal No.13/2021 has submitted that the delay has already been condoned vide order dated 5.10.2021 passed in I.A. No.15/2021, and hence, the point on limitation cannot be raised at the stage of final hearing. He further submits that the appellant purchased the land only on bonafide belief and after obtaining the no objection

certificate etc. and he was not aware about any cases pending against the vendor i.e. Mr. Rosangliana who purchased the property in the year 2002 and accordingly, he submitted that his property should be released or the appellant No.1 in appeal No.17/2020 be directed to refund the money.

36. On the other hand, the learned Additional Public Prosecutor submitted that the learned District Judge had rightly passed the order and there is no reason to make any interference in the judgment and order dated 5.10.2022 passed by the said Court in MPID Case No.81/2015. She further submitted that all the depositors suffered for a long period of 10 years with a hope that they will get an attractive benefits of money which they have deposited in the financial establishment of P & Sons.

37. So, from the submissions made by the learned counsel for the appellant in Criminal Appeals No.17/2020, 18/2020 and 13/2021 and also hearing the learned Additional Public Prosecutor in all the appeals, it is seen that the main ground taken by the appellants in criminal Appeal No.17/2020 is that they are not involved in the offences and they never received any deposits from the depositors, though, the Government/competent authority attached the property of this appellants for realizing the money of the depositors. It is the case of the appellant in appeal No.17/2020 that they never received any deposits as alleged against him, though; it is a fact that Mr. Rosangliana, the appellant No.1 in Criminal Appeal No.17/2020 is the owner of the property of P & Sons. Further, it is stressed by the learned counsel for the appellant that most of the properties which are being attached in the name of P & Sons were procured/made by the appellants prior to the year 2006/2009 and hence, the property acquired by this appellant has no relation with the deposited money nor the properties were

acquired by them from the deposits made by the depositors.

38. To substantiate the plea, the appellant produced the documents, wherefrom, it is seen that most of the LSC's are prior to the year 2006/2009 since when the depositors allegedly deposited their money. Further, it is submitted by the learned counsel for the appellant that under the threat and coercion the appellant No. 1/Shri Rosangliana had to make an undertaking to return the money to the depositors on behalf of his son Shri Lalrinzuala, where, the depositors have deposited their money in the financial institution of P & Sons. But, from the statement made by the witnesses as well as from the other documents, it is seen that Shri Lalrinzuala used to receive the deposits in the name of P & Sons and the other two appellants were also received some of the deposits from the depositors in the name of financial institution of P & Sons. It also reveals that there is no separate financial establishment of the appellant/Shri Lalrinzuala and all the family members are involved in the said business, and, they also reside under the same roof. Thus, the entire family member used to deal with the business in the name and style of P & Sons.

39. As referred above, the section 3 (2) (ii) (b), it is seen that the Government/competent authority can attach the property to realize the deposited amount of the depositors and to protect the interest of the depositors either by attaching property of such financial institution or other property allowed to have been procured either in the name of the financial establishment or in the name of other business from or out of the deposits collected by the financial institution and if such properties are not sufficient for repayment of the deposits, such other property of the said financial establishment or promoter manager or member of the said financial establishment can also be attached by

the competent authority. Thus, it is seen that, it is immaterial as to whether the property was procured out of the deposits or from the other sources but as per the Act, it is the duty of the competent authority to attach the property of said financial institution or other property only to protect the interest of the depositors.

40. Thus, from the submission made by the learned counsel for both sides and the materials available in the record, it is seen that the P & Sons is the family business of the appellant including Shri Lalrinzuala and the depositors have deposited their money only in the name of the financial institution i.e. the P & Sons which is the family business. Though, the proprietor of the said P & Sons is the appellant No.1/Shri. Rosangliana (Crl.A. No.17/2020).

41. Coming to the Crl.A. No 18/2020 which is filed by Mr. Lalrinzuala, it is seen that he is the person who mainly took the deposits from the depositors in the name and style of P & Sons and he has no other separate financial institution and he carried out the business of deposits only in the name and style of P & sons.

42. Further from the submission made by the learned counsel for the appellant in Crl.A. No.17/2020 and Crl.A. No.18/2020, it is seen that the earlier Money Suit No.73/2011 was filed by 327 numbers of the plaintiffs claiming for their deposited money of around Rs.13 crores against the present appellants. However, the said money suit was withdrawn by some of the depositors and subsequently, Money Suit No.81/2013 was filed by 211 numbers of plaintiffs claiming an amount of more than Rs.8 crores from the present appellants. Accordingly, it is submitted by the learned counsel for the appellants that 116 numbers of depositors have already received back their deposited money from

Shri Lalrinzuala and hence, they have withdrawn the earlier Money Suit No.73/2011. The learned counsel for the appellant accordingly submitted that the said Lalrinzuala had no intention to defraud the depositors and hence, he has already returned some amount of money to some of the depositors and he also intended to return the money of other depositors. Thus, the ingredients of Section 3 (2) (ii) (b) also does not attract against the present appellant. But, it is seen that the money suit was filed by 211 numbers of plaintiffs in the year 2013 and after the *ad-interim* Attachment orders the final order passed in MPID Case No.81/2015 only in the year 2020. But, since long period of 7/8 years, the appellant/Shri Lalrinzuala did not return any money to the depositors for which the order of *ad-interim* Attachment orders was made absolute by the learned District Judge in its judgment and order dated 05.10.2020.

43. From the submission made by the learned Additional Public Prosecutor as well as from the record, it is seen that there is no such kind of prayer was also made by the present appellant in MPID Case No.81/2015 or during pendency of the Crl.A. No.18/2020 to return back the money to the depositors. Rather, it is seen that the appellant No.1/Shri Rosangliana (Crl.A.17/2020) had undertaken to return the deposited money to the depositors on behalf of Shri Lalrinzuala. Thus, it is seen that the appellant appellant No.1/Shri Rosangliana also took the responsibility of returning the money which was invested by the depositors in the name of the financial institution P & Sons, and he admittedly he is the proprietor of P & Sons.

44. Further, from the deposition of some of the witnesses including one of the plaintiff's who represented the 210 numbers of depositors in the Money Suit No.81/2013 had specifically stated that all the depositors have deposited their

money in the name of the financial institution of P & Sons, which is a family business of all the appellants. From the evidences of some of the witnesses also, it is seen that the appellant Nos. 2 and 3 in CrI.A.No.17/2020 also received the deposits from some of the depositors in the name of the said institution. Further, it is seen from the submission made by the learned Additional Public Prosecutor as well as from the record that all the depositors had deposited their money only with the institution namely P & Sons and there was no other institution run by the appellant/Shri Lalrinzuala and the depositors have invested their money only to get an attractive amount with a good interest and hence, deposited their money in the name of P & Sons. From the witnesses, it is also seen that the financial institution of P & Sons is the family business of Shri Rosangliana and all the family members who resides under the same roof also took part in running the said business in the name and style of P & Sons.

45. Coming to the issues raised by the learned counsel for the appellants in CrI.A.No.17/2020 and CrI.A.No.18/2020, in regards non exhibition of the documents by the PWs, it is seen that the witness No.6 had already exhibited all the documents i.e the lists of properties acquired in the name of P & Sons and other individual properties of the appellants, while adducing their evidence before the Court.

46. Further, coming to the another issue raised by the learned counsel for the appellant in regards to filing of the affidavit which is required under Section 4 (4) of the said Act along with the application filed by the competent authority under Section 4(3) of the said Act for making the *ad-interim* attachment orders absolute. He submits that as per Section 4 (3) of the said Act, it is the mandatory provision to file an affidavit along with the application by the

competent authority under Section 4 (3) of the said Act praying to make the *ad-interim* Attachment orders absolute. In this regard, as referred above, he relied on the decision passed by the Hon'ble Andhra Pradesh High Court in ***Criminal Appeal No.1045/2014 dated 03.03.2015.***

47. On the other hand, as referred above, the learned Additional Public Prosecutor has submitted that one affidavit is sworn by the competent authority while filing the application to make the *ad-interim* Attachment orders as absolute. In this regard, she relied on the decision passed by the Hon'ble Apex Court in the case of ***Naresh Kumar, (Supra)***, wherein, it has been held by the Hon'ble Apex Court that "as far as possible the substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable". Here in the instant case also, it is seen that one affidavit accompanied along with the application for making the *ad-interim* Attachment orders absolute. However, it is seen that there is no specific mention about fraud committed by the institution etc. in the affidavit. But, from the affidavit, it is seen that the person who sworn the affidavit is well conversant with the fact mentioned in the connected application. Accordingly, the deponent had declared that the statement made in the application are true to his knowledge and believe. Thus, it is seen that, though there is no specific mention about fraud committed by the institution etc. in the affidavit, but, the affidavit has been sworn by the competent authority who filed the application praying to make *ad-interim* Attachment orders as absolute.

48. Accordingly, in view of the Hon'ble Apex Court as well as to give the substantive justice to the party, the right of the party should not be allowed to be defeated only on the account of technical irregularity. And, here in the

instant case, it is seen that there is substantive compliance of Section 4 (4) of the Act, 2002.

49. In view of the entire discussions made above, this Court is of the opinion that there is no reasons to make any interference in the judgment and order passed by the learned District Judge in MPID Case No.81/2015 whereby, the *ad-interim* Attachment orders was made absolute by the learned District Judge.

50. Coming to the Crl.A.No.13/2021, it is seen that the appellant has claimed himself to be the *bonafide* purchaser of the land of Mr. Rosangliana which he procured or purchased in the year 2002. As per the appellant, he purchased the land after obtaining No Objection Certificate, Non-Incumbent Certificate as well as verifying the certificate of the land settlement book which was in the name of Shri Rosangliana/respondent No.6 (Crl.A.No.13/2021) in the year 2002. Thus, he submits that only on the *bonafide* belief that the land is free from all incumbencies, he entered into an agreement and the sale deed was executed by Shri Rosangliana/respondent No.6, though it was within the knowledge of Mr. Rosangliana that the land has already been attached by the concerned department.

51. He further submitted that the appellant was not aware about the fact of any attachment orders passed against the LSC's No. 161/2002 and only after obtaining the necessary document and after verification he purchased the land from Shri Rosangliana/respondent No.6. It is a fact that, the appellant in Crl.A. No.13/2021 is not connected with the properties acquired by the other appellants in the name and style of P & Sons in Crl.A. No.17/2020 and Crl.A.No.18/2020. There is no allegation against the present appellant that he received any money from the depositors. However, he entered into an

agreement for sale and the sale deed was executed in his favour. But, the land was purchased without proper verification.

52. But, the present appellant cannot get the benefit under this Act which is specifically for the protection of interest of the Depositors. The intention of the legislation behind the enactment of the MPIDFE Act of 2002 is to protect the interest of the depositors. And, the appellant of the instant Appeals cannot come under the purview of the said Act, who is not a depositors, but, a purchaser of the attached property. His right cannot be said to be affected as depositors to get the benefit under the scheme of the Act. More so, his case comes under the Doctrine of '*Lis Pendens*' under the proviso of Section 52 of the Transfer of Property Act, 1882.

53. However, the present appellant in CrI.A.13/2021 may approach before the appropriate forum for seeking the refund of the consideration amount which he has already paid to the respondent No.6/Shri Rosangliana as a consideration amount for the property covered under LSC's No.161/2002.

54. In view of above, this Court is of the opinion that there is no reason to make any interference in the Judgment & Order dated 05.10.2020 passed by the learned Additional District & Sessions Judge, Aizawl in MPID Case No. 81/2015. Accordingly, the Criminal Appeal No.17/2020, Criminal Appeal No.18/2020 and Criminal Appeal No.13/2021 are hereby dismissed.

JUDGE

Comparing Assistant