

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1169 OF 2015

Ms Taramati Sadanand Pathak ... Petitioner

Versus

Mr. V.U. Seemon & Anr. ...Respondents

.....

Ms Taramati Pathak, Petitioner in-person present.

Smt. V.R. Raje for Respondent No.1

Ms G.P. Mulekar, APP for Respondent No.2-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : -30th JUNE, 2015.

P.C.

Heard the Petitioner in-person and Advocate for
Respondent No.1.

2. The petition arises out of the order of learned Sessions Judge in Criminal Revision Application No.5 of 2015 setting aside the order of the Magistrate passed in Criminal M.A. No.520 of 2010(new Criminal M.A. No.8092 of 2014). The learned Magistrate directed the Collector, Mangalore to auction certain property belonging to Respondent No.1 which included Survey No.266/1B2 A1 P5(0.26 acres) including the house known as Cliffdale in Kadri Hills,

Mangalore. Learned Sessions Judge has set aside the order passed by the Magistrate in respect of the above stated property.

3. The Petitioner had filed a complaint under section 138 of Negotiable Instruments Act against Respondent No.1 Mr. V.U. Seemon in the Court of Magistrate at Pune. Respondent No.1 was convicted. His appeal was dismissed. His revision application before this Court was also dismissed. He failed before the Hon'ble Supreme Court also. It is how Respondent No.1 faced recovery proceedings by attachment of his properties and sale thereof under the revenue law.

4. The point which needs determination in the petition is as to whether the Trial Court or the Appellate Court can regulate the recovery proceedings initiated by the Revenue Officer (Collector of District Mangalore, Karnataka). It appears from the record that learned Judicial Magistrate, First Class, Pune, directed attachment of certain property including property situated at Survey No.266/1B2 A1 P5(0.26 acres) including the house known as Cliffdale in Kadri Hills, Mangalore. Respondent No.2 filed revision petition before the Sessions Court challenging the order of the Magistrate in respect of

the above stated property pointing out that the property belonged to his wife. The learned Additional Sessions Judge set aside the order of the Magistrate.

5. The Petitioner (original complainant) is aggrieved by the said order. Without going into the merits of the case, the legal issue which arises for determination, as already stated, is as to whether the Judicial Magistrate could have passed such an order directing the attachment and sell of particular property. Answer to the question is in negative for the simple reason that once the trial is concluded and the accused has failed upto the Apex Court and once the recovery proceedings are initiated by the competent recovery / revenue officer the learned Trial Magistrate cannot regulate the recovery proceedings. The recovery proceedings are regulated by the relevant revenue law under which the arrears are to be recovered by way of land revenue. All objections in respect of attachment and auction are to be raised before the recovery officer and not before the Trial Magistrate. As such, the learned Judicial Magistrate and the learned Sessions Judge have committed error of law and therefore, their orders need to be set aside and accordingly set aside.

5. The writ petition stands disposed of accordingly.

(JUDGE)