

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 978 OF 2013

Dr. Smitali Baburao Humraskar

...Applicant

Versus

Union of India & Ors.

...Respondents

Ms K.H. Rajani for the Applicant.

Mr. S.K. Shinde with Mr. Y.M. Nakhwa, Spl.PPs. for
Respondent No.1.

Mr. V.B.K. Deshmukh, APP for Respondent No.3-State.

CORAM:-M.L. TAHALIYANI, J.

DATED :13th JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned counsel for the Applicant, learned Spl.PP
for Respondent No.1 and learned APP for Respondent No.3-State.

3. The Applicant challenges order passed by learned Special
Judge in Special Case No.11 of 2013 in M.A. No.80 of 2013. A
miscellaneous application was submitted by the Applicant before the
Special Judge for releasing landed property bearing Survey No.45/6B
situated at Maoje Chandhi, Taluka Karjat, Dist. Raigad admeasuring

about 64 guntas seized by CBI in Case No.3347/RC/BSM/2011, E 0004 U/s.102 of Cr.PC.

4. Above stated case was registered by the C.B.I. against M/s. Rajat Pharmachem and others on the basis of written complaint lodged by Bank of India alleging that the accused persons during the period of 2007-2009 were party to the criminal conspiracy to cheat the Bank of India to the tune of Rs.339 crores approximately. On conclusion of investigation a charge-sheet has been submitted against M/s. Rajat Pharmachem Ltd, Indrajeet Jagdishchandra Arya, chairman of the said company and others including some Bank Officers. During the course of investigation above land was attached by the C.B.I. in exercise of its powers under section 102 of the Criminal Procedure Code.

5. Land originally belonged to one Prabhakar Kolambe. It was purchased by Purushottam Sakhalkar from Prabhakar Kolambe on 2-9-1994. Said Prabhakar Kolambe again sold the same property to Indrajeet Arya. The Applicant purchased the land from Purushottam Sakhalkar. It is the case of the Applicant that she had verified all the records and found that the entry in respect of transfer of land to Mr.

Indrajeet Arya, Respondent No.2 herein, was cancelled by the competent revenue authority and thereafter the Applicant had purchased the property. There is no doubt that there is a registered sale deed in the name of the Applicant executed by Purushottam Sakhalkar.

6. Property has been seized by C.B.I. alleging that property was purchased by Indrajeet Arya by means of money which he had misappropriated in conspiracy with others.

7. As such, there are two sale deeds in respect of the same property. The C.B.I have attached the property on the ground that it was purchased by the accused -Respondent No.2.

8. The learned Sessions Judge has refused to grant the prayer of the Applicant on the ground that the competent civil court only can decide as to who is the owner of the property – either Respondent No.2 or the Applicant. In my opinion, the said issue was not necessary to be taken into consideration while deciding the present application. Obviously the title for the property will be decided by the civil Court and civil court will decide as to which of the two sales is a genuine

sale. Issue before the Trial Court was only with regard to attachment of the property. The lifting of attachment does not by itself give title or possession of the property to the Applicant. It is interesting to note that Respondent No.2 has chosen to remain absent though served. This Court can therefore infer that Respondent No.2 is not interested in the said property.

9. The question which arises for determination is as to whether C.B.I. could have seized the immovable property during the course of investigation? Though the learned Spl.PP, Mr. Shinde has raised question of bonafides of the Applicant, the said question is hardly relevant to the present application. Issue involved is purely of legal nature. This question had been answered by Full Bench of this Court in a reference made by Division Bench to Full Bench in the matter of **Sudhir Vasant Karnataki V/s. State of Maharashtra & Ors**¹. The majority Judges of the Bench concluded as under :

Q.(a) Whether the words “ any property” used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include “immovable property”?

Ans. We, therefore, hold that the expression “any property” used in sub-section (1) of Section 102 of the Code does not include immovable property. Question

1 In the High Court of Judicature at Bombay, Criminal Writ Petition No.3198 of 2009

(a) is, therefore, answered in the negative.

Q.(b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?

Ans. No.

10. In view of the judgment of Full Bench it is abundantly clear that the C.B.I. could not have seized the immovable property in exercise of its powers under section 102 of Code of Criminal Procedure.

11. The order passed by the learned Special Judge in M.A. No.80 of 2013 rejecting the application of the Applicant for releasing the property described hereinabove, is set aside. The application is accordingly allowed. The attachment of the property bearing Survey No.45/6B situated at Maoje Chandhi, Taluka Karjat, Dist. Raigad admeasuring about 64 guntas shall be lifted forthwith by C.B.I.

12. The application stands disposed of.

(JUDGE)