

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.843 OF 2015

Suresh Raju Shetty,  
R/o.Mulund (West), Mumbai.

Appellant

versus

1. The State of Maharashtra  
through EOW Crime Branch CID,  
Mumbai.

2. Smt.Laxmi Shetty,  
R/o.Mulund (West), Mumbai.

Respondents

Mr.S.P.Kadam i/by Mr.Prashant Badole for Appellant.  
Mrs.M.M.Deshmukh, APP, for Respondent no.1 State.  
Mr.Vinay J. Bhanushali for Respondent no.2.

CORAM : NARESH H. PATIL AND  
P.D.NAIK, JJ.

DATE : 16 June 2016

PC :

1. Admit. By consent, taken up for final disposal.
2. The Appellant challenges various orders passed by learned Special Judge under Maharashtra Protection of Interest of Depositors Act, 1999 ('MPID Act'). The Appellant Mr.Suresh Shetty is the original accused in CR No.10 of 2003 registered

with Mulund Police Station, Mumbai for offences punishable under Sections 406, 420, 120B of Indian Penal Code ('IPC'). The offence was registered on the complaint lodged by Respondent no.2 herein Mrs.Laxmi Shetty. The case was transferred to GBCB, CID. A charge sheet came to be filed by the investigating agency. The case is pending before the Special Judge under MPID Act.

3. It is the case of the complainant-second Respondent that the Appellant had started an investment company in the name of Om Sai Capital and Leasing and Finance Private Limited having office at Mulund, Mumbai. In the year 1998, the complainant along with her relatives had invested monies in the said company on the promise made by the company that 25% interest per annum would be paid on the investments. The complainant and her relatives invested substantial amounts. It is further alleged that after the investment, the complainant and her relatives did not receive any interest on the deposits and hence they had resorted to initiation of criminal proceedings. The Appellant came to be arrested on 11 March 2003 and was released on bail on 14 April 2003.

4. The Special Judge under MPID Act passed an order on 24 July 2003 directing the Appellant to deposit Rs.2.45 crores within a period of fifteen days. The Appellant preferred an application below Exhibit-25 in MPID Case No.8 of 2011, dated

5 September 2013 before the Special Judge under MPID Act seeking stay of the operation of the order dated 24 July 2003 of the Special Judge. The said application was rejected by order dated 18 July 2014 and the Appellant was directed to comply with the order dated 24 July 2003 within ten days. The Appellant preferred an application being Criminal Application No.948 of 2014 under Section 482 of the Code of Criminal Procedure, 1973 ('Code') in this Court challenging the orders dated 24 July 2013, 18 July 2014 and 26 August 2014 of the Special Judge under MPID Act. Vide order dated 22 September 2014, the learned Single Judge of this Court granted ad-interim relief and stayed the proceedings before the learned Special Judge as well as the non bailable warrant issued against the Appellant pending Criminal Application No.948 of 2014.

5. Pending Criminal Application No.948 of 2014 in this Court, the learned Special Judge under MPID Act issued show cause notice dated 15 January 2015 to the Appellant calling upon him to state as to why his bail should not be cancelled as he had made false statement and refused to deposit the amounts realised from selling secured property. Criminal Application No.948 of 2014 ultimately came to be disposed of on 12 June 2015 and non-bailable warrant issued against the Appellant was cancelled and Appellant was directed to remain present before the Special Judge with liberty to file an appeal against the order of learned Special Judge under MPID Act.

6. The Appellant further states that subsequently he preferred present Appeal No.843 of 2015 in this Court on 16 June 2015. During pendency of present appeal, the Appellant amended the appeal by challenging the order passed by the Special Judge under MPID Act on 28 January 2016 cancelling the bail granted to the Appellant, directing the EOW, Mumbai to arrest the Appellant by issuing non bailable warrant against him.

7. Learned counsel for the Appellant submitted that the order passed by the Special Judge under MPID Act dated 24 July 2014 was unreasonable and without jurisdiction. One of the properties of the Appellant was sold under the proceedings initiated before Debts Recovery Tribunal, Mumbai. There was no mala fide intention of the Appellant to sell the said property. Learned counsel for the Appellant submits that in the present case, provisions of Sections 4,5 and 7 of the MPID Act were not followed. Provisions of Section 8 of MPID Act are not applicable to the facts of this case. He, therefore, submits that the order passed on 24 July 2013 was not sustainable as no case was made out to refuse bail to the Appellant. Learned counsel further submits that the Appellant would face the criminal case as charge sheet has already been filed.

8. During the course of arguments, learned counsel for the Appellant has brought to our notice the order passed by the

Special Judge under MPID Act dated 23 November 2015 directing the Appellant not to dispose off any of the properties without prior permission of the Court. Learned counsel states that one of his residential house would be covered under the said order.

9. Learned counsel appearing for the second Respondent submits that considering the purpose for which MPID Act was enacted and taking into consideration the facts of the present case, the learned Special Judge under MPID Act has rightly exercised its power in view of provisions of Sections 8 and 9 of MPID Act. There was no other alternative with the learned Special Judge than to pass the impugned order, as it was noticed by the Trial Court that with mala fide intention, the Appellant had created third party interests in the properties, to deprive the depositors of their legitimate dues receivable from the Appellant. The learned counsel submitted that the Appellant entered into a sale transaction privately with the third party. Out of the sale proceeds, an amount of Rs.60 lakh was deposited with DRT, Mumbai. The said property was got released from DRT, Mumbai and remaining amount was appropriate by the Appellant. In fact, the remaining sale proceeds ought to have been deposited by the Appellant with the Special Court under MPID Act. On noticing this lapse and conduct of the Appellant, the learned Special Judge rightly took cognizance and in the interests of the depositors and

considering the purpose behind legislating MPID Act, passed the impugned orders. Learned counsel for the second Respondent relied upon a decision of this Court in case of **Indur Kartar Chhugani Vs. State of Maharashtra and another**<sup>1</sup>.

10. Learned APP submits that MPID Act is specifically framed and enacted to protect the interests of depositors. In the facts of present case, the learned Special Judge took appropriate view in putting stringent conditions and cancelling the bail of the Appellant.

11. We have perused the provisions of MPID Act and considered the submissions advanced before this Court. In our view, the first order passed by learned Special Judge under MPID Act dated 24 July 2013 ought to have been supported by sufficient reasons. The said order would affect rights of affected parties. The Special Court under MPID Act passed further order dated 28 January 2016 cancelling bail granted to the Appellant with a direction to the EOW, Mumbai to arrest the accused.

12. The issue is whether in the facts of the case, the learned Special Judge, in view of provisions of Section 8 of MPID Act, could have passed an order of attachment of the amount received by the Appellant to the tune of Rs.2.45 crores?

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<sup>1</sup> 2016(1)-Bom.C.R. (Cri)-718

Whether for exercising power under Section 8 of the MPID Act, the procedure enunciated under Sections 4, 5 and 7 of MPID Act is required to be followed? These issues were not addressed and considered at all at the time when learned Special Judge passed order dated 24 July 2013. The said order is appearing in the Roznama of the MPID Case No.11 of 2003 with MPID Case No.8 of 2005, as brought on record of this Court at page 149 of the paper book.

13. In the facts of the case, we find it appropriate to remand the matter back to the Special Judge under MPID Act by setting aside the orders dated 24 July 2013, 18 July 2014 and 28 January 2016 passed by learned Special Judge under MPID Act.

14. We, accordingly, pass following order :

(a) The orders dated 24 July 2013, 18 July 2014 and 28 January 2016 passed in MPID Special Case Nos.8 of 2005, 11 of 2003, 10 of 2012 and 11 of 2012 are quashed and set aside;

(b) In view of this order, the earlier order of bail in favour of Appellant would stand revived;

(c) We direct the Special Judge under MPID Act to hear the parties (Appellant, Respondent no.2, State and Prosecuting Agency) on the application filed by the second Respondent at

Exhibit-22 on its own merits. The Special Judge shall pass a reasoned order on the said application on its own merits and in accordance with law within three months from the date of receipt of a copy of this order;

(d) The appeal is partly allowed in the above terms, with no order as to costs.

(PD.NAIK, J.)

(NARESH H. PATIL, J.)

MST