

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1140 OF 2015

Mohan Hotchand Khanchandani ... Appellant

V/s.

The State of Maharashtra & others ... Respondents

Mr. Bharat Vaishnava i/b. Bharat Vaishnava & co. for the appellant.

Mr. J.P.Yagnik, APP for the State.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

16th September, 2016.

P.C.

Admit. Heard finally by consent of parties.

2. The petitioner challenges the order passed by the Designated Court under the M.P.I.D. Act at Bombay City Civil and Session Court, Mumbai dated 16th June, 2015 in Misc. Application No. 42/2014. Learned Counsel appearing for the appellant submits that he is aggrieved specifically with clauses (4) and (10) of the impugned order dated 16th

June, 2015. The Counsel submits that petitioner's transaction was bonafide. He is not an accused. He is a small businessman. The subject property is a shop which he has purchased from the accused. The Counsel submits that accused are absconding and due to said reason proceedings were initiated against the accused persons. The Counsel further submits that he is not in a position to deposit FDR of Rs.5 Lacs due to financial constraints and difficulties.

3. Learned APP submits that Court has passed a reasonable order based on the material placed before it. Therefore, no interference is warranted in the impugned order.

4. We have perused the record placed before us. The trial Court observed in clause (3) of the order to the effect that applicant is not held to be a malafide transferee at this stage. However, towards security in lieu of the attachment, the appellant/applicant was directed to furnish FDR in his name for Rs.5 Lacs. The appellant is not shown as an accused but the prosecution case is that he has purchased the shop from the accused persons. On appellant raising objection under Section 84 of Cr.P.C. in respect of subject property, the impugned order came to be passed by allowing the said application. The investigating agency was

directed not to attach the property under Section 83 of the Cr.P.C.

5. It is submitted by the appellant that he has financial difficulties in submitting the FDR of Rs.5 Lacs, even otherwise, it is a matter of record that he is not an accused. The observations of the M.P.I.D. Court while passing orders on the application are perused by us. In the facts we are of the view that the impugned order requires to be modified as under:

ORDER

(i) The appellant shall furnish security in lieu of attachment by presenting FDR in his name for an amount of Rs.2,50,000 (Rupees Two Lacs and Fifty Thousand only) drawn on any nationalised Bank, within three weeks from today. The said FDR shall be kept with Registrar, City Civil Court, Greater Mumbai.

(ii) We direct that appellant shall not create any third party interest of whatsoever nature in respect of the property i.e. Shop No.14/A/2 admeasuring 320 sq.ft. At Majaswadi Amey Co-operative Housing Society Ltd. Ground floor, New Mhada colony, Mahakali Road, Andheri East, Mumbai-93.

6. The appeal is partly allowed in the aforesaid terms. Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.