

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 951 OF 2015

Indur Kartar Chhugani	}	
Age - 67 years,	}	
Occ. - Retired, permanent	}	
resident of flat 501, 502,	}	
Pinky Panorama, Khar W,	}	
presently residing at -	}	
C/o Manohar Makhija 8,	}	
Ajwani apartments, 16,	}	
Shankershet Road,	}	
Pune - 411 042	}	Appellant

versus

1. The State of Maharashtra	}	
At the instance of EOW,	}	
Mumbai	}	
	}	
2. Shri Mehboob Inamdar	}	
(former Investigation	}	
Officer) Police Officer -	}	
Umri Police Station,	}	
Nanded District,	}	
Maharashtra - 431 807	}	Respondents

WITH
CRIMINAL WRIT PETITION NO. 4406 OF 2015

Indur Kartar Chhugani	}	
Age - 67 years,	}	
Occ. - Retired, permanent	}	
resident of flat 501, 502,	}	
Pinky Panorama, Khar W,	}	
presently residing at -	}	
C/o Manohar Makhija 8,	}	
Ajwani apartments, 16,	}	
Shankershet Road,	}	
Pune - 411 042	}	Petitioner

versus

**1. The State of Maharashtra }
At the instance of EOW, }
Mumbai } Respondent**

Mr. Indur K. Chhugani - Appellant in-person.

Ms. J. P. Yagnik - APP for Respondent Nos. 1 and 2 (State).

Mr. Mehboob A. Inamdar - Police Inspector present in Court.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

**Reserved on :- December 17, 2015
Pronounced on:- January 19, 2016**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

This Criminal Appeal (Appeal No. 951 of 2015) challenges the order passed by the designated Court dated 30th July, 2015 exercising powers under the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 (for short the "MPID Act"). The impugned order is passed on a Miscellaneous Application and we would refer to the details thereof.

2) The Appellant before us is the original Noticee in MPID Case No. 12 of 2005, which has been filed by Respondent No. 1 State. That case has been filed against one Rajkumar Basantani under various sections of the MPID Act. It would be

necessary to refer to that case in some details. One M/s. Soundcraft Industries Limited was granted financial assistance to the extent of Rs.1000 lacs. It was an assistance granted by the Punjab National Bank. M/s. Seema Investments Private Limited, owner of Flat No. 502, 5th floor, Pinky Panorama Co-operative Housing Society Ltd., 6th Road, Khar (West), Mumbai stood as guarantor to the loan extended to M/s. Soundcraft Industries Limited. M/s. Soundcraft Industries Limited was controlled by one Rajkumar Basantani along with his associates. This M/s. Soundcraft Industries Limited also obtained the loan/financial assistance from another bank, namely, Bharat Overseas Bank. In order to secure the financial assistance granted and rendered by these banks, M/s. Seema Investments Private Limited stood as co-lateral security. It created equitable mortgage in respect of another flat No. 501 situate on the same floor and of the same building. It is alleged these flats are having one entrance. They are joined from inside and treated as one residential unit. Appellant Indur Chhugani, his wife and his son claim to be in actual physical possession of these flats.

3) It is the case of the prosecution that Rajkumar Basantani failed to repay the amounts due and payable to these banks. Consequently, proceedings under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the “SARFAESI Act”) were initiated. Under the said proceedings and reaching the satisfaction that the concerned persons failed to repay the loan, the mortgaged properties were directed to be seized. On 23rd June, 2004, symbolic possession of the flats was taken. Thereafter, under the directions of the Chief Metropolitan Magistrate, Mumbai, the Registrar of the said Court took possession of the flats under a panchanama and handed them over to the two banks. The said Rajkumar Basantani faced proceedings under the MPID Act and as per the provisions thereof, the designated Court passed an order of attachment of these flats. That order was passed on 19th January, 2005. The Investigating Officer attached these flats under the panchanama of 8th February, 2005. On 12th February, 2005, the concerned banks, at whose instance the flats were taken over by the order of the Chief Metropolitan Magistrate, Mumbai under the SARFAESI Act, were served with a copy of the attachment order passed by the MPID designated Court.

4) The said Indur Chhugani/Appellant before us claimed to have approached both the banks and placed his bid for purchasing the same. It is his case that he tendered the amount of alleged agreed price of both these flats and handed over

Demand Draft in the sum of Rs.50.91 lacs. However, according to the banks, there was no concluded contract. The amount offered by Indur Chhugani was considered to be below the reserved or upset price. The proposal of Indur Chhugani was rejected and his Demand Draft was returned to him without encashment.

5) It is in these circumstances that the Investigating Officer and investigating the offences alleged to have been committed under the MPID Act found that Indur Chhugani, his wife and sons are occupying these flats. He informed the MPID Court about the same. The MPID Court issued directions for inspection and accordingly, the inspection revealed that the said Indur Chhugani/Appellant before us was residing in these flats without there being any valid document of transfer of title/ownership in his favour. Thus, the possession of Indur Chhugani and his family was not found to be lawful. That is how the MPID Court made detailed inquiry. The Appellant before us has referred to several proceedings, including Miscellaneous Applications and Writ Petitions so also Suit filed sometime in October, 2005 for specific performance of an alleged agreement of sale in his favour. That Suit was also not entertained but rejected. Thereafter, certain proceedings by the Investigating Officer, including a FIR (C. R. No. 103 of 2005) registered at Khar

Police Station alleging offences punishable under sections 448, 454 read with 34 of the Indian Penal Code, 1860 against the Appellant are referred.

6) The Appellant claims to have been dragged into litigation before the designated Court and relies upon an order dated 30th January, 2006 discharging the show cause notice dated 22nd March, 2005 issued against him.

7) However, the Petitioner also invites our attention to Criminal Appeal No. 688 of 2006 filed by Punjab National Bank against him and Bharat Overseas Bank challenging the order dated 30th January, 2006 discharging the show cause notice. He also refers to a Writ Petition filed by him in this Court being Criminal Writ Petition No. 2414 of 2005 against the State of Maharashtra and Others.

8) We will advert to the same and the events set out in the order passed on 27th September, 2012 by this Court in both these proceedings a little later.

9) Suffice it to state that the Petitioner preferred Miscellaneous Application No. 34 of 2013 praying that the attachment order dated 19th January, 2005 be declared as void being passed without complying with condition precedent laid

down in the MPID Act. He also prayed that the show cause notice issued to him on 23rd March, 2005 be withdrawn and that he be allowed to examine/cross-examine the Investigating Officer, Mr.R. Srinivasan of Punjab National Bank, Mr. Mihir Datta of Bharat Overseas Bank and Assistant Police Inspector Mr.Jitendra Kamble of the Economic Offences Wing.

10) The attachment order was passed on 19th January, 2005 by the MPID Court and on 22nd March, 2005, the *Rozanama* in MPID Case No. 12 of 2005 recorded that the report produced by PSI Mehboob Inamdar shows that the seal placed by the Investigating Officer on 8th February, 2005 was broken/removed and Mr. Indur Chhugani and his family members entered the premises and are occupying the flats. The bank officers claimed that they have taken possession of the flats and put up their lock and seal over the same and even they were contending that Mr.Chhugani has illegally entered the premises by removing the lock and seal. It is in these circumstances the Court issued notice directing the Appellant to appear before it and to explain as to why appropriate proceedings shall not be initiated against him for removing the seal on the property attached by the order of Court and making illegal entry into the property lying attached by the order of the Court.

11) On this application, the impugned order has been passed on 30th July, 2015. The Special Judge under the MPID Act and Additional Sessions Judge, City Civil Court, Greater Mumbai relied upon the order passed by the Division Bench of this Court dated 27th September, 2012 in the afore-referred proceedings and relying upon the same and also an order passed in another Criminal Application No. 7912 of 2005 in Criminal Writ Petition No. 2414 of 2005, proceeded to reject the application. It is this order which is challenged in the Appeal by the Appellant.

12) The Appellant has chosen to address us in-person.

13) Prior thereto, it must be pointed out that this Criminal Appeal was placed before us by the Registry after the directions of the Hon'ble The Acting Chief Justice. It was placed before us along with the Writ Petition and the Appellant's Written Submissions were taken on record. In the Written Submissions, the Appellant submitted that he is aged 67 years and is Noticee and Witness No. 202 in MPID Case No. 12 of 2005. He would submit that the attachment order passed on 19th January, 2005 is null and void because that was obtained by playing a fraud on the MPID Court. The Appellant would submit that the order was passed after the Investigating Officer Mehboob Inamdar filed

Miscellaneous Application No. 24 of 2005 on 18th January, 2005 and an affidavit dated 19th January, 2005. It is submitted by the Appellant that the Investigating Officer Mr. Inamdar though only a Police Sub Inspector, assumed role of the competent authority. As per law, the competent authority can only be an officer not below the rank of Deputy Collector to be appointed by the Government.

14) Then, it is submitted that the order dated 19th January, 2005 is passed for extraneous considerations, inasmuch as the reasons given by the Investigating Officer, in his affidavit dated 19th January, 2005, were that two applications were received for release of the property. The accused made these applications though the transfers of the properties were mala fide. These properties were released and surprisingly no objection was raised by the Investigating Officer to the release of these properties. Accused Rajkumar Basantani sold these properties though he was in USA. He received payment for these properties outside India. It is also submitted that the Investigating Officer was aware of the fact that the attachment is null and void because he recommended sale of the properties without any order of the MPID Court. This property was mortgaged to Bank of India and sold by the bank without filing any application to the MPID Court.

The Appellant also relies upon release of some properties on 20th June, 2005 by the MPID Court.

15) It is further submitted that the case under the MPID Act was ordered to be registered only on 12th April, 2005, which is 75 days after the order of attachment. No order, after recording reasons, in writing, had been published in the official Gazette as per the mandate of the statutory provision, namely, section 4(1) of the MPID Act. The competent authority, in terms of the law, namely, section 5(1) of the MPID Act was not appointed by the State of Maharashtra and even now is not appointed. It is this competent authority which can apply to the designated Court stating the grounds on which the Government had issued the order under section 4 about the money or property believed to have been acquired out of the deposits collected. Investigating Officer Inamdar was not such competent authority. Further, section 8 of the MPID Act can be invoked only if the properties already notified under section 4 are found to be less than the amount or value which the financial establishment is required to repay to the depositors. In the present case, there is no material on record to show that any proceedings took place under section 4 of the MPID Act. There are no reasons recorded in writing nor an order is issued by publishing it in the official

Gazette attaching the money or properties believed to have been acquired by the financial establishment either in its own name or in the name of any other person out of the deposits collected by the financial establishment. Thus, the Special Judge was unaware of the mandate of sections 4 and 5 of the MPID Act when he made the order of attachment on 19th January, 2005.

16) Assuming that the statutory provisions had been complied with, still, the properties in question, namely, the flats at Khar, could not have been attached. These properties are not enlisted for the purpose of section 4 of the MPID Act. The property was not sealed. Secondly, the equitable mortgage was created in 1998 in favour of Bharat Overseas Bank and Punjab National Bank respectively by the guarantor M/s. Seema Investments Private Limited for huge loans availed by accused Rajkumar Basantani. M/s. Seema Investments Private Limited is not an accused in the MPID case. Once the banks have exercised their rights under the SARFAESI Act and took possession of the flats through the Court of the Chief Metropolitan Magistrate, Mumbai on 12th October, 2004, they cannot be considered as malafide transferees. Flat Nos. 501 and 502 in Pinky Panorama were purchased by M/s. Seema Investments Private Limited in March, 1998 after obtaining loan from Global Trust Bank. These

are not purchased from out of deposits collected by the financial establishments named in the charge-sheet. Therefore, the property was purchased by third party guarantor and does not come within the purview of the MPID Act. The total claims from investors amount to Rs.1,42,51,114/- as on 26th February, 2015. The cash amount collected and available for disbursement to investors is over Rs.2 crores today and therefore enough to satisfy the alleged claim. If the Appellant entered the possession pursuant to his bid which was highest and placed before the Joint Asset Sale Committee of Punjab National Bank and Bharat Overseas Bank, then, the attachment was ex-facie unlawful and should have been raised. The Appellant's objections to attachment of the flats though were in writing, that and other vital documents, including the order dated 30th January, 2006 were misplaced from the Court records. It is also contended that there was an order of eviction of the Appellant from these flats passed on 15th October, 2011, but that was quashed and set aside by this Court on 12th December, 2011 in Criminal Appeal No. 1409 of 2011.

17) It is in these circumstances and when the record was traced after tremendous efforts and pursuit by the Appellant, then, these materials should have been considered. Non

consideration thereof vitiates the impugned order. The attachment now, therefore, should be raised.

18) With regard to the notice dated 22nd March, 2005 and which the Appellant has faulted, he would submit as under:-

(a) Respondent No. 2 alleged before the MPID Court that when he went to seal another flat being Flat No. 701 in the same building Pinky Panorama Co-operative Housing Society Ltd. on 20th March, 2005, he incidentally discovered that the Appellant and his family had trespassed in Flat No.501, which was sealed earlier on 8th February, 2005. However, the Investigating Officer never informed the MPID Court in the hearings held in the month of February and March, 2005 that he had sealed Flat Nos. 501 and 502. He did not produce the panchanama of having sealed these flats. It is on his oral statement that the learned Special Judge, MPID Court initiated proceedings and that is how the Appellant and his family members are suffering from last 10 years.

(b) After referring to the order passed on 22nd March, 2005 and the subsequent proceedings, the Appellant would submit that the version of the Investigating Officer, which was not accurate, has been used by the bankers and that is

how the Appellant's sufferings have continued. He could not even convince this Court regarding his version while pressing Writ Petition No.2414 of 2005 and Criminal Appeal No. 688 of 2006. That the flat was never sealed by the Investigating Officer on 8th February, 2005 as claimed. That the Investigating Officer fabricated some records. Nothing was submitted by him to the Khar Police Station. That is how the Appellant would rely on information provided under the Right to Information Act, 2005. Thus, the panchanama and relied documents are bogus and fabricated. It is in these circumstances that the Appellant would question even the order passed on 22nd March, 2005.

19) The Appellant, in his oral arguments further elaborated some of the contentions. He tried to urge that even records and proceedings of the case in the Court have disappeared and therefore he has serious apprehension that he would not get justice. The appellant has relied upon number of judgments and we would make a reference to them during the course of this judgment.

20) The Appellant has relied upon following judgments:-

(i) *Lalaram and Ors. vs. Jaipur Development Authority and Anr. Civil Appeal No. 13940 of 2015* (Supreme Court) and connected Appeals.

(ii) *The Director of Sericulture Department Salem and Ors. vs. K. Kumar and Ors. Writ Application No. 1398 of 2013* (Madras High Court) and connected matters.

(iii) *Asit Kumar Kar vs. State of West Bengal and Ors. (2009) 2 SCC 703.*

21) On the other hand, Mr. Yagnik, learned APP appearing on behalf of the State supported the impugned order and submitted that the Appeal has no merits and deserves to be dismissed. The learned APP would submit that all the contentions as are raised before us have already been dealt with by this Court in the earlier round. The Appellant is in habit of repeating his pleas and though he is unsuccessful. Mr. Yagnik would submit that the order passed by this court has been upheld by the Hon'ble Supreme Court of India. In these circumstances, the order under challenge does not require any interference and the Appeal must be dismissed.

22) This is an Appeal under section 11 of the MPID Act. With the assistance of the Appellant appearing in-person, we have perused the memo of Appeal and all Annexures thereto. We have perused the compilations handed over by the Appellant. We have also perused the relevant legal provisions and the decisions brought to our notice.

23) As is apparent, the Act has been enacted to protect the interest of depositors in the financial establishments and matters

related thereto. Section 1 states that the Act shall be deemed to have come into force on 29th April, 1999. The definitions are to be found in section 2 and the word “Financial Establishment” in section 2(d) would mean any person accepting deposit under any scheme or arrangement or in any other manner but does not include the entity in the later part of the definition. By section 3, fraudulent default by financial establishment and which occurs on non-repayment of deposit on maturity along with benefit in the form of interest is made an offence and visited with punishment of imprisonment for a term which may extent to six years and with fine. The persons in-charge and in the capacity set out in section 3 can be proceeded against and prosecuted. To carry forward this essential object and purpose and to punish the defaulters, attachment of properties on default of return of deposits is provided for by section 4. Section 5 deals with appointment of competent authority and section 6 provides for constitution of one or more designated Courts. That is to deal with the offences under the MPID Act. The powers of the designated Courts regarding attachment are set out in section 7 and section 8 provides for attachment of property of malafide transferees. By section 9, security in lieu of attachment is provided for so that the order of attachment can be cancelled on offering such security. That is in lieu of attachment.

24) The administration of the property attached is provided for in section 10 and by section 11, there is a provision of Appeal. The rest of the provisions therefore enable proper and efficient administration of the Act.

25) The Appellant does not dispute that he had filed a Writ Petition being Writ Petition No. 2414 of 2005 and which was heard together with the Appeal of Punjab National Bank being Appeal No. 688 of 2006.

26) This Court, in a judgment rendered in both the proceedings, held that there is no substance in the Appellant's grievance. However, prior to the final judgment on 9th September, 2009, on this Criminal Writ Petition, this Court passed the following order:-

“1. This Petition shall not be taken up for further hearing at any time in future, at the instance of the Petitioner unless he vacates both the flats i.e. Flat No. 501 and 502, which he and his family is in possession for the last about 4 years, despite the order passed by this Court on 12th December, 2005 and the recent orders passed by the Debt Recovery Tribunal.

2. Admittedly our order dated 12th December, 2005 has received its finality and the Petitioner is bound by the observations made therein about his alleged title over the said property i.e. the suit flats.”

27) The Appellant approached the Hon'ble Supreme Court of India against this order, but the Hon'ble Supreme Court of India dismissed the Special Leave Petition with the following observations:-

“UPON hearing counsel the Court made the following

O R D E R

We do not find any ground to interfere.

The special leave petition is dismissed.”

28) Thereafter, the Appellant sought to recall the order passed on 9th September, 2009, but that application was also dismissed on 5th January, 2011. Thereafter, the Appellant made an application before the MPID Court, being Miscellaneous Application Exhibit 1 in MPID Case No. 12 of 2005. That application was decided on 15th October, 2011 by the learned Special Judge, MPID Court and it came to be dismissed. Against that order, Criminal Appeal No. 1409 of 2011 was preferred and on 12th December, 2011, a Division Bench of this Court quashed and set aside the following directions in the order passed by the learned Special Judge, MPID Court:-

“2. The applicant shall pay penalty of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the State by depositing it in the office of this court, **within two (2) weeks from today**, for filing this frivolous application in order to protract the trial under the MPID Act and interfere with the administration of justice.

3. The applicant and his family have been declared as trespassers in flat nos. 501 and 502 by the order of Hon'ble High court with further orders that he shall not be heard unless he vacates the said two flats. Hence the applicant along with his family shall vacate the said flats forthwith, and at the latest within two weeks from today.

4. The Investigating Officer is directed to pursue with the competent authority to attach and seal the property being flat nos. 501 and 502 Pinky Panorama Co-operative Housing Society Ltd., 6th Road, Khar

(W), Mumbai – 400 052 under Section 8 of the MPID Act and **report compliance to this Court on or before 01.12.2011.**”

29) The Division Bench allowed the Appeal in these terms and directed expeditious disposal of the pending proceedings under section 8 of the MPID Act.

30) Then, Criminal Writ Petition No. 2414 of 2005 together with Appeal No. 688 of 2006 of Punjab National Bank came to be heard by a Division Bench of this Court and on 27th September, 2012, after detailed hearing and perusal of the entire record, it delivered a judgment and in paras 18 to 25, held as under:-

“18. After the above observations of the then MPID Court, the matter was again taken on 24.3.2005 and directions were given to PSI Inamdar to lodge complaint immediately in respect of the incident of Indur Chhugani and his family members found in possession of flats No.501 & 502 which were attached under Section 8 of the MPID Act and when prima facie there was nothing brought before the Court so as to consider the possession of Indur Chhugani and his family members being legal.

19. We have observed that the matter was then taken before the another Judge holding the charge of the MPID Court and the impugned order dated 30.1.2006 was passed by which show cause notice issued against Indur Chhugani was discharged. Considering the provisions of Section 8 of the MPID Act and considering the material brought before the MPID Court during January & March, 2005, it cannot be said that there was any error committed by the earlier MPID Court in issuing a show-cause notice against Indur Chhugani. In other words, we must say that another MPID Court while passing the impugned order dated 30th January, 2006 erred in accepting the plea of Indur Chhugani that issuance of show-cause notice against him presupposes that there

was no attachment of flats No.501 & 502. It must be said that another MPID Court while passing the order dated 30.1.2006 over-looked the effect of order passed by this Court on 12.12.2005 (Coram: D.G. Deshpande & V.M. Kanade,JJ.). The said order dated 12.12.2005 was passed in the present Criminal Writ Petition No.2414/2005 when application No.7912/2005 was preferred by petitioner - Indur Chhugani for protecting the possession of the petitioner in respect of flats No.501 & 502. In the order of this Court on the said Criminal application No.7912/2005, it is amply clear that two flats were attached by MPID Court on 19.1.2005 and subsequently the petitioner was found in possession of said two flats and on that premise, show-cause notice was issued against him.

20. During hearing of the said application of Indur Chhugani praying for protection of the possession, an attempt has been made by him to produce certain documents as to payment of amount by D.D. to the concerned bank and certain correspondence entered by him with the banks. It must be said that the said documents regarding correspondence with the banks, produced and relied by Indur Chhugani was not accepted as reliable evidence and it was the observation of this Court that those documents were self-created evidence and they were all one-sided and depict what the petitioner did. It was further observed by this Court that there was no legal transaction by which said flats were validly transferred to the petitioner Indur Chhugani by the concerned banks in any manner much less conveying the title. Finally, this Court has observed that there was no case of giving protection to the petitioner Indur Chhugani with respect to his possession over the said flats and hence said Application No.7912 of 2005 was rejected and even the prayer for stay of the said order was rejected. It is significant to note that the order of this Court on said application is dated 12.12.2005 and in spite of passing of such order, subsequently the order dated 30.1.2006 was passed by another MPID Court, which is an order impugned in the present Criminal Appeal No.688 of 2006 under consideration.

21. At the cost of repetition, we must mention that very categorical observations were made by another Division Bench of the High Court while passing order dated 12/12/2005 (D.G. Deshpande and V.M. Kanade, JJ.). Certain observations including narration of the case of the petitioner from the said order dated 12/12/2005 are reproduced hereunder :

“It is the case of the petitioner that respondent nos.5 and 10 invited bids for selling these two flats. He took part and offered his bid and it is his further case that his bid was accepted by both these respondents. He made payment to them and then he was placed in possession by these two respondents. These facts are denied by the Advocates for both these respondents.....”

“We must clearly say that not a single letter is there in possession of the petitioner showing that his bid was accepted by any of the respondents referred to above; that they intended to sell the property to him; that they had accepted the Demand Draft towards purchase money and there are no other writing or letter from any of these two banks placing or handing over the possession of these two flats to the petitioner. All these four documents are self created evidence. They are all one sided. They depict what the petitioner did. But no transaction is complete without the concurrence and consent of other side.....”

“It is prima facie clear that the seal of the flats was broken by this petitioner and he forced his entry in the same. No protection can be given to him. Therefore, his application is rejected.”

22. In view of the above order of this Court rejecting Criminal Application No.7912 of 2005, the MPID Court could not have reappraised the situation in different perspective and to come to the conclusion that there was no attachment under Section 8 of the MPID Act concerning flat Nos.501 & 502. It must be said that the concerned MPID Court while passing the impugned order dated 30.1.2006 has fallen in error in reappraising the facts and coming to the conclusion other than non-availability of any material against Indur Chhugani.

23. The fallacious observations of the then MPID Court are reproduced hereunder which are at paragraph No.23 of the said order dated 30.1.2006 :

“23. In the light of the above discussion, there is no convincing material available on record against the noticee Chhugani regarding the alleged removing of seal of property attached by the order of the Court and making illegal entry into the property attached by the Court and especially in the light of registration of F.I.R. into the matter which is pending investigation. The said show-cause dated 22.3.2005 is hereby discharged.”

24. At the cost of repetition, the factual position is to the effect that prior to the impugned order dated 30.1.2006 discharging the show-cause notice, there was order of this Court in Criminal Application No.7912/2005 dated 12.12.2005 as mentioned earlier. Moreover, said order of this Court has not been challenged by the petitioner – Indur Chhugani and the same has attained finality. This factual aspect cannot be over-looked by us while deciding the present matters.

25. It also cannot be over-looked that the directions for initiating criminal proceedings against Indur Chhugani and his family members, were given by the MPID Court vide order dated 22nd March, 2005 and such directions were given on the factual position of Indur Chhugani and his family members found in actual physical possession of the flats No.501 & 502 without there being any valid documents for such possession, more so when the said flats were already attached under Section 8 of the MPID Act vide order dated 19.7.2005. As such, the argument on behalf of the petitioner Indur Chhugani that the criminal complaint was mala fide, cannot be sustained. The petitioner cannot rely on the order dated 30.1.2006 which is impugned in the criminal appeal, as in our considered opinion, the said order cannot be sustained and the same is accordingly required to be set aside allowing the present criminal appeal preferred by Punjab National Bank.”

31) While dealing with Criminal Writ Petition No. 2414 of 2005, this Court in paras 26, 27, 30, 31 and 32 held as under:-

“26. Now, coming to the specific prayers in Criminal Writ Petition No.2414 of 2005 asked by the petitioner Indur Chhugani, it must be reiterated that the order of attachment of flats No.501 & 502 dated 19.1.2005 is legal and valid and the same has not been set aside by any Court and in fact said order has not been challenged and as such there is nothing to doubt the prosecution lodged against the petitioner Indur Chhugani vide C.R. No.103 of 2005 registered with Khar police station for the offences punishable under Section 448 & 454 read with Section 34 of Indian Penal Code.

27. During the arguments, much emphasis was placed by Indur Chhugani in his written and oral submissions that there cannot be a charge for offences punishable under

Sections 448 & 454 read with Section 34 of Indian Penal Code against him and his family members with respect to his possession over flats No.501 & 502. On this aspect, considering the offences mentioned in the relevant sections and considering that the matter is still at the investigation stage and after thorough investigation the final charge-sheet is yet to be filed and considering that finally it would be for the trial Court to frame the charges against the accused person by applying appropriate penal provisions, it would be inappropriate to allow the prayer of the petitioner of quashing the said criminal proceedings for specific charges under Section 448 and 454 read with Section 34 of Indian Penal Code. In other words, whether or not a particular section is applicable against the accused is the job of the competent Court before which the chargesheet would be filed after investigating agency places entire available material before the Court. In the present matter, after completion of the investigation, we have no doubt, that the trial Court would consider the said material and frame appropriate charges against Indur Chhugani and his family members.

.....

30. Now coming to the question of recovering the possession of the property in Flat Nos.501 and 502 from the petitioner certain argument of State are to be detailed. During arguments, the learned APP placed reliance on the judgment of the Hon'ble Apex Court in Teeka and others vs. The State of Uttar Pradesh (AIR 1961 SC 803, para 13 thereof). By pointing out the ratio propounded in the above authority, it is submitted that where a property has been legally attached by a Court, the possession of the same passes from the owner to the Court or its agent. In that situation, the owner of the said property cannot take the law into his own hands, but can file a claim petition to enforce his rights. If he resorts to force to get back his property, he acts unlawfully and by taking the property from the legal possession of the Court or its agent, he is causing wrongful loss to the Court. As long as the attachment is subsisting, he is not entitled to the possession of the property, and by taking that property by unlawful means, he is causing wrongful gain to himself.

31. The petitioner in person contended that there was no attachment of Flat Nos. 501 and 502 under Section 8 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and as such, all further steps and consequential proceedings would not be legal and valid and as such, no action shall lie against the

petitioner and his family members only on the basis of his possession over the said flats. In support of this submission, reliance is placed on the judgment of the Hon'ble Apex Court in State of Punjab vs. Davinder Pal Singh Bhullar and others (2011 STPL (Web) 1035 SC). The petitioner heavily relies on para 72 of this decision. The same reads thus:

“72. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order.”

32. However, considering the overall fact situation of the matter at hand, in our considered view, as we have already mentioned, there was a valid and legal attachment of Flat Nos. 501 and 502 under the order of the Special M.P.I.D. Court and in fact, the possession of the petitioner over the said flats is and was always illegal right from the inception. This has been found by this Court and that finding has attained finality. Thus, at the cost of repetition, it must be mentioned that there is no substance in the arguments of the petitioner.”

32) This Criminal Writ Petition was also dismissed. This Court also set aside the order dated 30th January, 2006 in C. R. No. 47 of 2004 passed by the MPID Court discharging the Appellant. The Appellant applied for recall of the above order and filed Criminal Application No. 1593 of 2012. That was also dismissed by this Court on 13th December, 2012. The Division Bench order of this Court in the main matter dated 27th September, 2012 was challenged before the Hon'ble Supreme Court of India and by an order passed on 1st March, 2013, the Special Leave Petition came to be dismissed.

33) We are of the opinion that in the face of these overwhelming materials and findings of a Division Bench of this Court, which have not been interfered with by the Hon'ble Supreme Court, we cannot entertain this Appeal. The same arguments of the Appellant have already been rejected. Each and every contention now raised before us has been duly noted and considered earlier. Thus, the attachment order and the notice to the Appellant are held to be legal and valid. All findings of the Division Bench, therefore, bind us. We cannot ignore or overlook the judgment of this Court dated 27th September, 2012. We cannot brush it aside either as it considers the same issue and controversy. It is thus binding on us.

34) In the view that we have taken on facts, the judgments relied upon by the Appellant are distinguishable. He relied upon the judgment of the Hon'ble Supreme Court in **Civil Appeal No.13940 of 2015** and others in the case of *Lalram and Others vs. Jaipur Development Authority and Anr.* decided on 1st December, 2015. The principle for which he relied on this judgment is that the right to property may be no longer a fundamental right but is otherwise zealously guarded as one which cannot be divested save by authority of law. He relied upon Article 300A of the Constitution of India. Thus, he would submit

that this right to property and as guaranteed by Article 300A is a human right. He has relied upon this principle and to urge that he is deprived of this right illegally and arbitrarily.

35) The principle of law is salutary, but its application to the facts and circumstances of each case is relevant. It will have to be established and proved by the parties like the Appellant that they have been deprived of their property or the right to hold it save and except by authority of law. In the present case, a validly enacted law of the State Legislature incorporating provisions enabling attachment of immovable property, which is acquired by a financial establishment from the amount of deposits collected by it, cannot be said to be unconstitutional or ultra vires Articles 14 and 300A thereof. In our view, after several opportunities, the Appellant is still unable to prove his allegations. Therefore, he cannot derive any assistance from this judgment and the principles laid down therein.

36) The reliance placed on the Division Bench judgment of the High Court of Judicature at Madras in the case of *Director of Sericulture Department Salem vs. K. Kumar and Others* in **Writ Appeal No. 1398 of 2013** decided on 8th July, 2015 is equally misplaced. We do not see any mistake or error being committed in the Division Bench judgment of this Court, which decides the

point or issue against the Petitioners. Therefore, this decision has no application and equally, the observations therein in para 35 cannot be read torn from the context.

37) The other judgments relied upon by the Appellant on the point that the orders passed without hearing and therefore in violation of the principles of natural justice are void is of no assistance simply because the Appellant has been heard extensively in all the matters brought by him before this Court. Therefore, we do not see any assistance can be derived from the judgments relied upon by the Appellant.

38) The Appellant argued the Criminal Appeal and the connected matters before us, but by reserving his arguments on the point that there ought to be video recording of the Court proceedings in this Criminal Appeal. Meaning thereby, we must direct video recording of this Court's proceedings in the Appellant's Criminal Appeal. We have clarified to him that there is a substantive Petition filed in this Court for a direction that all proceedings of this Court be video recorded and as and when that Petition is taken up, we will allow him to canvas his arguments. After this clarification, the Appellant proceeded to argue the Criminal Appeal before us in-person and without insistence on video recording of the court proceedings.

39) The Appellant has severely criticised the Division Bench judgment and has, in the pleadings, cast aspersions on the Hon'ble Judges comprising the Bench. We do not approve the use of intemperate language and discard the reckless allegations made against Judges constituting the Special Court and the Division Bench. We say nothing more. We find that some parties appearing in person try to subvert the Course of justice by resorting to proceedings of the present nature. The whole intent is to reopen concluded issues and matters. Once the judicial process is allowed to take its full course and the parties like the Appellant have not been able to substantiate and prove their version, then, they must accept adverse verdicts with humility and respect. Merely because the version of such parties is not accepted or upheld by a Court of law does not mean that the faith and trust reposed in Institution of Judiciary by other citizens and persons should be attempted to be shaken and shattered by frivolous proceedings. The Appellant has not conducted himself in a dignified and decent manner while making personal allegations against Hon'ble Judges and some of which he tried to orally repeat. However, considering his age and that he is a senior citizen, we do not pursue the matter further. Mounting a personal attack on the Judges for the view taken by them in their judgments is otherwise a serious matter.

40) As a result of the above discussion, the Criminal Appeal fails. Save and except the aspect of video recording of Court proceedings which request is made in the Criminal Writ Petition on other grounds it must fail and is dismissed particularly on above findings rendered by us.

41) However, we clarify that in the event the Appellant has any grievance with regard to loss of records and original proceedings from the file of the Trial Court, it is open for him to raise a grievance in that regard before the Designated Court. Save and except that aspect of the matter, all other issues stand concluded against the Appellant by the Division Bench Judgment referred above and we cannot revisit the same or recall any of the findings and conclusions therein. The entire attempt of the Appellant is aimed at this exercise and therefore, that being impermissible in law, we had no alternative but to dismiss the Criminal Appeal. It is accordingly dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)