IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 570 OF 2017

M/s. Millennium Semiconductors,]
having its registered office at]
17, 18, 19, 2nd floor,]
Mahalaxmi Height,]
Old Mumbai-Pune Highway, Pimpri,]
Pune – 411 018]
Through its authorized signatory]
Mr. Shahid Shaikh].. Appellant
[Ori. Applicant]

Vs.

1) The State of Maharashtra]
through the Public Prosecutor,]
High Court, Bombay.]
]
2) The Senior Inspector of Police,]
Economic Offence Wing,]
Unit – VII, Mumbai].. Respondents

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Mr. Yashodeep Deshmukh Advocate i/b Ms. Rachana K. Divekar Advocate for Appellant

Mr. H.J. Dedhia A.P.P. for the State

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CORAM : SMT.V.K.TAHILRAMANI AND SANDEEP K.SHINDE, JJ.

DATED : JULY 26, 2017

<u>ORAL JUDGMENT</u> [PER SMT. V.K.TAHILRAMANI,J.] :

1 Heard the learned counsel for the appellant and the learned A.P.P. for the State.

2 This appeal is directed against the order dated 19.5.2016 passed by the Special Judge, MPID Act and Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Misc. Application 35 of 2016 and connected application in C.R.No. 83 of 2015 of E.O.W., Mumbai, Unit-VII. By the said order the appellant was directed to deposit Rs. 23.50 lakhs which was received by the appellant by way of security deposit / premium in relation to the premises leased out by the appellant to the accused / financial establishment.

3 Admittedly, the appellant is the owner of immovable property situated at Mahalaxmi Height, Old Mumbai-Pune Highway, Morwadi, Pimpri - 411018, Dist. Pune. This property was given on leave and licence to the accused in CR No. 83 of 2015. The said property was attached by E.O.W, hence, the appellant approached the Special Court on various grounds to set aside the attachment. It was submitted that the property did not belong to the accused / financial establishment

but it belonged to the appellant and was given to the accused / financial establishment by way of leave and licence agreement and the accused / financial establishment had no right, title or interest in the property.

4 The Special Judge held that the attachment was illegal, however, the said Court directed the appellant to deposit Rs. 23.50 lakhs received by the appellant from the accused / financial establishment towards premium or security deposit in relation to the lease agreement of the said premises. Being aggrieved by this order directing the appellant to deposit Rs.23.50 lakhs which they had received towards security deposit, this appeal has been filed.

5 The leave and licence agreement has been annexed to the appeal. In the leave and licence agreement, it is clearly mentioned that the security deposit amounting to Rs. 23.50 lakhs was paid to the appellant vide cheque no. 119709 dated 19.6.2013 drawn on Indusind and cheque no. 260743 dated 30.8.2013 drawn on ING Bank. It is an admitted fact that this amount was received by the appellant from the accused /

financial establishment. The investigation in this case shows that there was no other business of the accused / financial establishment other than the receiving the amounts from the depositors and as such, the amount of premium which was paid to the appellant is out of crime proceeds. It is not disputed by the prosecution that the appellant is the owner of the said property nor have they disputed that the property was given to the accused / financial establishment on leave and licence basis. But it is their stand that the amount of Rs.23.50 lakhs which was received by the appellant was out of the crime proceeds and it was a malafide transfer, hence, they sought direction that the amount which was received by the appellant by way of premium / security deposit be deposited in the Court. It is also not disputed that the appellant has received the amount of Rs.23.50 lakhs by way of premium / security deposit. The stand of the Investigating Officer for attaching the property was that the movable property of the accused persons was kept inside the said premises, hence, for protection of that movable property which was inside the premises of the appellant, he attached the said property. As stated earlier, the learned Special Judge has held that this attachment was illegal and directed the Investigating Officer to remove the movable articles belonging to the accused / financial establishment from the said premises and to hand over the possession of the property to the appellant and accordingly, the premises was handed over to the appellant.

6 The learned counsel for the appellant submitted that the accused / financial establishment had not paid 9 months' rent to the appellant, hence, it is entitled to forfeit the premium / security deposit. It was further stated that the appellant has paid the electricity bills amounting to Rs.2,15,510/- as well as the other bills. He submitted that the amount to be paid towards the electric bills is a statutory liability. This amount was not paid by the accused / financial establishment, hence, the appellant had to pay for the same, in such case, the appellant was entitled to retain the security amount of Rs.23.50 lakhs. In addition, leave and licence agreement was entered into in good faith and it was not a case of malafide transfer and in such case, the appellant should be allowed to retain the amount of Rs.23.50 lakhs.

7 According to the investigating agency, the amount of premium / security deposit which was transferred by the accused to the appellant is out of the crime proceeds i.e. the depositors' amount and as per Section 8 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as "MPID Act") malafide transfer is prohibited. Transfer of crime proceeds by the accused to the appellant is a malafide transfer and it is prohibited under Section 8 of the MPID Act wherein the bonafides or good faith of the transferee would have no role to play. The transfer of the crime proceeds i.e. the amount of the depositors to the appellant even though the appellant was not aware of the fact that the amount received by them is out of crime proceeds, cannot be said to be a bonafide transfer. Under Section 8 of the MPID Act, the act of the accused / financial establishment is to be seen to ascertain the malafide transfer and not the bonafides or good faith of the transferee. As stated earlier, the accused / financial establishment had no other business excepting the receiving of amounts from the depositors as such, this amount pertains to crime proceeds, hence, the appellant cannot be allowed to retain the same and

the order of Special Judge directing the appellant to deposit the amount of Rs.23.50 lakhs, cannot be faulted.

8 In view of the above, we find no merit in the appeal and the appeal is dismissed.

[SANDEEP K. SHINDE, J.] **[SMT.V.K.TAHILRAMANI, J.]**

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