

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.586 OF 2016
IN
CRIMINAL APPEAL NO.586 OF 2014**

Suresh Pinto)...Appellant/Applicant

V/s.
State Of Maharashtra)...Respondent

Mr. Rahul Arote Advocate for the Applicant.

Mr. Hiten Venegaokar, Advocate for Respondent-CBI.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 17th April, 2017.

P.C. :

This is an application by the convicted accused/applicant/appellant before this Court with a prayer that he should be permitted to sell/dispose of shop bearing no.4 situated at Gokul Nagari, Village: Poysar, Kandivali belonging to him so also to defreeze the term deposit of Rs.50,000/- of Hong Kong Bank bearing no.004539516051.

2 Heard the learned advocate appearing for the applicant/appellant. He argued that the applicant is convicted with a maximum sentence of imprisonment for a period of 5 years and with imposition of fine of about Rs.10 Lakhs. He argued that entire amount of fine is already deposited by the applicant/accused and the appeal filed by him is pending before this Court. The learned advocate for the applicant drew my attention to the agreement for sale dated 1.2.1997 and stated that in pursuant to this agreement, shop no.4 came to be purchased by the applicant/accused. The learned advocate drew my attention to the order dated 17.9.2004 passed by the learned Special Judge and argued that during the pendency of the case, the applicant was permitted to use the shop no.4. It is further argued that the impugned judgment and order passed by the learned Special Court is not directing confiscation of the shop in question and, therefore, the applicant be permitted to sell out the said shop.

3 The learned advocate appearing for the CBI opposed this application by contending that the application itself is not maintainable because now the proceedings are pending before the

Court of Small Causes, Mumbai for forfeiture of the shop in question. The learned advocate drew my attention to the affidavit-in-reply filed by the respondent-CBI and contended that criminal case in respect of the forfeiture of the shop is still pending before the Court of Small Causes, Mumbai.

4 I have carefully considered the rival submissions and perused the application as well as affidavit-in-reply. In reply affidavit, it is categorically averred that on proposal of the CBI for filing case for attachment of shop no.4, the Government of India in exercise of the powers conferred under Section 3(1)(2) of the Criminal Law Amendment Ordinance 1944, read with Section 29 of the Prevention of Corruption Act, 1988 authorised Inspector of the Police, CBI, ACB, Mumbai to make an application under Section 3 of the said Ordinance for attachment of the properties belonging to accused persons before the Court of Small Causes, Mumbai. Accordingly, as seen from the affidavit, Case No.AC 100002 of 2000 is registered with the Court of Small Causes, Mumbai under Section 3 of the Criminal Law Amendment Ordinance, 1944 for attachment of Shop No.4. That case is still

pending.

5 In view of the fact that proceedings for attachment of the shop are pending before the Competent Court, the application cannot be granted even though properties of other accused might have been released. Therefore, the order:

(1) The application is rejected.

(A. M. BADAR, J.)