

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL NO.501 OF 2014

Pradyuman Kumar Sharma Appellant
Vs.
The State of Maharashtra & Others Respondents

Mr. Vikram Sutaria for the Appellant.
Mr. J.P. Yagnik, APP, for the Respondent-State.
Mr. Kirit Hakani & Niyati Hakani for Respondent No.2.
Mr. J.M. Khajotia for Respondent Nos.3 to 6.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 01, 2017

P.C:

1. By this appeal, the appellant/original accused No.10 is challenging an order dated 5-4-2014 passed in Miscellaneous Application No.113 of 2013 in Miscellaneous Application No.42 of 2012 in MPID Special Case No.7 of 2000.

2. The said order was passed on an application for obtaining custody of documents produced in the MPID case by

one Jaysagar Sancheti.

3. The appellant before this Court states that certain firms and companies concerning Kuber Group were arrayed as accused, besides the appellant and his brother. An FIR bearing No.44 of 2009 was registered at the instance of the present appellant wherein the learned Additional Chief Metropolitan Magistrate's Court, South-East District, New Delhi issued directions for carrying out further investigation. The investigations related to four Agreements dated 10-7-2000. These are alleged to be forged by three persons. An application, Exhibit-62, came to be filed at the instance of the Investigating Officer Mr. Sunil Kumar, Inspector of Anti-Forgery Section of Economic Offences Wing, Crime Branch, Delhi requesting the Special Judge to release these documents for production before the Competent Criminal Court at New Delhi. That application was partly allowed on 25-9-2012. The main request made came to be rejected. However, the Special Judge directed the Investigating Officer in the special case before him to supply to the Investigating Officer Mr. Sunil Kumar attested coloured

zerox copies of the documents. The Trial Court also allowed the Investigating Officer, Mr. Sunil Kumar, to obtain enlarged photocopies of the original documents from the hand-writing expert. Thereafter, the original documents were directed to be placed in the custody of the MPID Special Case Investigating Officer.

4. Equally the application so filed (Miscellaneous Application No.42 of 2012) by the appellant/accused came to be disposed of on 6-11-2012 in terms of the earlier order, copy of which is at Annexure-A. The latter order of 6-11-2012 is annexed as Annexure-B.

5. It is stated that the Investigating Officer of the Economic Offences Wing, New Delhi filed final report in C.R. No.44 of 2009 and based on non-availability of the original documents.

6. It is stated that the learned Additional Chief Metropolitan Magistrate, New Delhi was pleased to observe that

in the absence of the original documents, a further request of the Investigating Officer therein to obtain an opinion of the forensic expert cannot be granted. It is stated that all this is because of the absence of the original documents.

7. It is, therefore, stated that the present appellant filed another application being Miscellaneous Application No.113 of 2013.

8. Even that application is stated to be rejected by the impugned order. Hence, this Appeal.

9. The only contention raised before us is that the original documents were sought by the Investigating Officer and once they were sought by an Investigating Officer of a competent police force in the State of Delhi, then, there was no apprehension of their loss or they being misplaced otherwise. The Special Court could have, with appropriate undertakings and conditions, released the original documents so as to permit the Investigating Officer at Delhi to complete the investigations

and register the crime. The absence of the original documents is clearly hampering the case at New Delhi whereas in the subject special case these given documents are of no relevance. For these reasons, it is stated that the impugned order be quashed and set aside.

10. On the other hand, there is an affidavit which has been filed after a copy of the appeal was served on the second respondent. It is stated that the appeal is not maintainable. Apart therefrom, it is contended that the demand for certain documents to be forwarded for hand-writing expert's opinion is *mala fide*, mischievous and in that regard respondent No.2 supports the conclusions in the impugned order. It is then stated that the proceedings before the learned Arbitrator resulted in a reference to these documents and the case of the present appellant, based on these documents, was not accepted. For these reasons, it is submitted that the appeal be dismissed.

11. The respondents to the appeal have thus supported the impugned order.

12. With the assistance of the learned Advocates appearing for the parties, we have perused the appeal paper-book. The order passed on 5-4-2014 refers to the application of accused No.1. The present appellant is original accused No.10. The prosecution has clearly referred to the earlier order of the learned Special Judge dated 25-9-2012 where the Investigating Officer was allowed to obtain photocopies of the originals from the Court. The Investigating Officer is not aggrieved and dissatisfied by this order. The Investigating Officer Mr. Sunil Kumar, who is investigating the criminal case in Delhi under an authority from the Economic Offences Wing, is not aggrieved and/or dissatisfied but accepted the direction of the learned Special Judge. He was assisted to a great extent, in the sense if the documents were required for the purpose of investigation of the case at Delhi, then, the originals may not be handed over but true copies from the proper custody, namely, from that of the official attached to the Special Court can be obtained by him. Once such is a direction being issued in the initial order of 25-9-2012, then, the learned Judge found no reason to modify

it. More so at the behest of the accused. The special case is pending from 2000. The trial is in progress. Now eleven witnesses are already examined. In such circumstances, the discretion exercised by the learned Special Judge is not arbitrary or capricious. He has passed an order consistent with the interest of justice and speedy and expeditious disposal of the special case.

13. We have found from the initial orders dated 25-9-2012 and 6-11-2012 that the present appellant made lot of efforts to obtain the very documents which were attempted to be obtained by Mr. Sunil Kumar. The Investigating Officer Sunil Kumar was handed true copies of these documents and was also permitted to take enlarged photocopies. It is in these circumstances, the learned Special Judge did not allow an independent request of the accused.

14. We have also perused the order dated 25-9-2012 and which is fairly detailed. In paras 16 and 17 of the order dated 25-9-2012, it was observed and held as under:-

“16. The dispute between Sancheti and P.K. Sharma is not directly governed by the offence u/s. 3 of MPID Act but it relates to the properties attached in this case. Section 8 authorizes the designated Court to attach the properties in possession of a third person if those properties are found to be malafide transferred by the accused. Of course, the Court has to follow the procedure prescribed u/s. 8.

17. When these agreements were attached in the year August 2000, Mr. Sancheti has produced these agreements in this court for claiming rights to develop the properties and this Court had rejected his plea on the ground that the agreements were not acted upon and for other reasons. Accused No.1 has filed this Complaint on 17/3/2009 that too in Delhi when the documents are notarized in Mumbai. Since these documents are relevant for the trial of this case and since the FIR lodged by the accused in Delhi court, is extremely weak, with serious doubts about territorial jurisdiction. I hold that if these documents in original are handed over to the I.O. Mr. Sunil Kumar, the trial of this case will be unnecessarily delayed. The accused would succeed by abusing the process in protracting the trial. However, the purpose of investigation of the case, filed in Delhi, can be achieved by allowing I.O. to take coloured xerox attested copies of the documents and by allowing the I.O. to take photographs of these documents from handwriting Expert, while the original documents remain in the custody of I.O. of EOW of Mumbai.”

15. We do not think that in such orders and when the discretion is properly exercised so also, in accordance with law

and not arbitrarily, that we should interfere in our appellate jurisdiction.

16. We do not find any merit in the appeal and it is dismissed.

17. We are really surprised that a special case as old as this and of the year 2000 is still pending. The learned Special Judge would be well-advised in giving it priority and ensuring its expeditious disposal. Though we do not deem it fit to determine and fix any outer limit or a stipulated time frame, we expect the learned Special Judge to give old cases due priority.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)