IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 476 OF 2016

Tarun Ratnani ..Appellant

v/s.

The State of Maharashtra . ..Respondents

Mr. Vikrant Negi, Mr. Rahul Sinha, Mr. Lokesh Jain i/b. DSK legal for the Appellant .
Mr. Pradeep Gharat , SPP for the State.

WITH
CRIMINAL APPEAL NO. 1125 OF 2015

M/s. HDFC Bank Ltd. ..Appellant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Chetan Agrawal for the Appellant .
Mr. Pradeep Gharat , SPP for the State.

CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : 19th APRIL, 2017.

P.C.

1. The Appellant in Criminal Appeal No. 476 of 2016 is the accused in C.R.No. 78 of 2013 registered by the Economic Offences

Wing (EOW) for offences punishable under Section 420, 120(b) of the Indian Penal Code, Sections 3, 5 and 6 of the Prize Chits and Money Circulation Schemes (banning) Act, 1978, Sections 2, 3 of the Maharashtra Protection of Interest of Depositors (in financial establishments) Act, 1999 and Section 5 and 7 of Magic Remedies (objectionable advertisements) Act. He shall be hereinafter referred to as “the accused”.

2. The appellant/accused has challenged the impugned order rejecting the application under Section 9 of the MPID Act whereby the appellant had offered security in lieu of the attachment of the car.

3. The appellant in Criminal Appeal No. 1125 of 2015 is a bank. The bank has challenged the impugned order rejecting its application under Section 451 of Cr.P.C. for return of the vehicle in question.

4. The records reveal that the appellant/accused had purchased the subject car. It is the allegation of the EOW that the said car was purchased out of the crime proceeds and therefore the same was attached.

5. The appellant/accused had earlier filed an application at

Exhibit 41 seeking similar direction. The application was rejected and thereafter this appellant filed Criminal Appeal No. 729 of 2015. The Division Bench of this Court by its Order dated 16th September, 2015 dismissed the said appeal. The application, subject matter of Appeal No. 476 of 2016 is dismissed on the ground that the earlier application filed by the appellant for similar relief is rejected. The learned Counsel for the appellant submitted that he will give alternate surety in the form of residential premises. However, he conceded that the same is not free hold property. The appellant owns this property jointly with his mother and there is a outstanding loan of Rs.54 lakhs on this property. We are, therefore, not agreeable with the alternative suggested by the learned Counsel for the appellant/accused. We do not find any merit in the Appeal No. 476 of 2016.

6. The appellant bank in Criminal Appeal No. 1125 of 2015, by preferring an Application at Exhibit C being Misc. Application No. 199 of 2015 claimed custody of the said vehicle and sought leave to sell the vehicle and recover the outstanding loan amount from the appellant in Appeal No.476 of 2016. This application was held not

maintainable in the light of the rejection of the application at Exhibit 41 by the appellant in Appeal No.476 of 2016, and confirmation of the same by the Division Bench of this Court in Criminal Appeal No. 729 of 2015. We find that the application is correctly rejected.

7. In the light of above circumstances, we dismiss both the appeals.

8. At this stage, it is brought to out notice that the Special Court under MPID Act has already passed an order directing the appellant/accused to furnish bank guarantee of Rs.35 lakhs, and in the event of failure of the appellant/accused to furnish bank guarantee, the Investigating Officer of the EOW is authorized to auction the said car. The appellant/accused has not furnished the bank guarantee as per the order dated 1st October, 2015 below application at Exhibit 41. We, therefore, direct the EOW to take appropriate steps to auction the vehicle, else the value of the vehicle will depreciate further.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**