

rpa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.89 OF 2016

1. Satpal Singh Bachan Singh Nagul
2. Smt. Simran Satpal Singh Nagul .. Petitioners

Vs.

1. State of Maharashtra
2. The Police Inspector,
Economic Offence Wing,
Thane Rule. .. Respondents

.....
Mr.K.M.Shine, Advocate for the Petitioners.
Mr.Y.M.Nakhwa, APP for the Respondent - State.
Mr.Lengare PI., Tulinj police station.
Mr.Pratap Bhasem P.S.I. EOW, Palghar, Present.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 3, 2018.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Matter is taken up for final disposal.

2 Petitioners are aggrieved by order dated 22nd September, 2015, passed by learned Additional Sessions Judge, Vasai, in Criminal Revision Application No.29 of 2015 and order dated 2nd February, 2015, passed in OMA No.837 of 2014.

3 The relevant facts which are necessary to adjudicate the present petition are as follows:

- (a) The petitioners are husband and wife. They were in need of residential flat at Khargher, Navi Mumbai. They purchased the flat bearing No.202, on the second floor admeasuring 1250 square feet carpet area in MEST Building (building no.5, as per approval of CIDCO), in the project known as “Kesar Exotica”, constructed on Plot no.264, 265 and 266 in Sector 10 at Kharghar, Navi Mumbai. The said flat was purchased from Mrs. Bhavana Karande, vide registered Sale Deed dated 16th May, 2014, registered with Sub Registrar, Panvel under registration No.3651 of 2014, by paying total consideration of Rs.1,25,00,000/-.
- (b) The original documents of the flat along with title documents and physical possession of the flat was handed over to the petitioners. The electricity meter was also transferred in their name.
- (c) The flat was originally purchased by Ms.Bhavna Karande from M/s.Kesar Realities Private Limited vide registered conveyance agreement dated 21st June, 2012, registered with Sub-Registrar, Panvel, under Registration No.5696 of 2012.

- (d) Before executing transactions with M/s.Bhavna Karande, petitioners were provided with verification of the original registered agreement dated 21st June, 2012 as well as physical site visit of the flat. They duly verified the title of Mrs.Karande to the said flat, and, relied upon title certificate dated 2nd November, 2007, issued by the advocate as well as by property search through another advocate vide Survey Report dated 8th May, 2014.
- (e) According to the petitioners, they had bonafide purchased the flat from Mrs.Karande by conducting due diligence and by payment of valuable consideration and in pursuant to that vacant physical possession thereof was handed over to the petitioners vide possession letter dated 16th May, 2014.
- (f) After registration of the sale deed dated 16th May, 2015, petitioners approached the office of M/s. Kesar Exotica society, when they were informed that the flat has been seized by the respondent no.2, vide panchanama dated 6th May, 2013. On further inquiry, they were given to understand that the flat has been seized in C.R.No.262 of 2012, registered by Manikpur Police Station against Yogesh Karande and others for offences under Sections 420, 406, 342, 465, 467, 468, 471 and 120-B of IPC. They were also

informed that charge-sheet has been filed before the appropriate Court on 31st November, 2013, and the case was numbered as C.C.No.963 of 2013, pending in the Court of 3rd Joint Judicial Magistrate First Class, Vasai.

- (g) According to the petitioners, on verification of case papers, it was noticed that Mrs.Bhavna Karande was not an accused in C.R.No.262 of 2012. The prosecution case was that accused Yogesh Karande is the husband of Mrs.Bhavna Karande and that he along with other co-accused floated various agencies and by using false documents, cheated the complainant and others. During the course of investigation, it was revealed that the flat was purchased by Yogesh Karane in the name of his wife Mrs.Bhavna Yogesh Karande by using the crime proceeds. According to the petitioner, the flat was not physically sold by respondent no.2 as the same was in physical possession of Mrs.Bhavna Karande, during the visit of the petitioners to the site on 11th May, 2014. There was no notice being displayed at the flat premises about the seizure of the said flat.
- (h) Petitioner preferred an application under Section 457, before the Court of Judicial Magistrate First Class, Vashi, which was numbered as OMA No.837 of 2014. The

investigating officer filed their reply on 28th November, 2014. In the reply it was contended that the name of Mrs.Bhavna Karande was inadvertently left out in the remand report and in the charge-sheet, as wanted accused, and, that the flat was seized on 6th May, 2013, under punchnama. Vide order dated 2nd February, 2015, learned Magistrate rejected the application.

- (i) The petitioner preferred Revision Application before the Sessions Court, which was numbered as Criminal Revision Application No.29 of 2015. Respondents filed reply to the said application claiming that C.R.No.262 of 2012, was also registered under the provisions of MPID Act. The Sessions Judge, vide order dated 22nd September, 2015, rejected the said application. Thereafter, respondent no.2 issued letter dated 16th November, 2015, to petitioner advising them to register fresh case of cheating with Panvel Police Station against Mrs.Bhavna Karande, in respect of the sale of the said flat.

4 Learned advocate for the petitioner submits that both the Courts below have committed an error rejecting the application for returning the flat premises to the petitioners. They are the bonafide purchasers of the said properties. The purchase

was made by paying valuable consideration and taking all due diligence including the search of property as well as physical inspection of the property. All original title documents and the keys of the flat are in possession of the petitioner. However, they were denied the right of enjoyment over the said property as the officials of respondent no.2 claimed to have seized the flat under panchanama on 6th May, 2013. It is further submitted that the Courts below had failed to take into consideration the decision of the Full Bench of this Court in the case of ***Sudhir Karnataki Vs. State of Maharashtra***, wherein it was held that the police have no right to seize the immovable property under Section 102 of Cr.P.C. The Sessions Court has failed to appreciate that the petitioners were bonafide purchasers of the property by paying lawful/valuable consideration. The Court failed to take into consideration that before entering the transaction with Mrs.Bhavna Karande, the petitioners were provided with verification of the original registered agreement dated 21st June, 2012, as well as physical site visit of the flat on 11th May, 2012, by vendor Mrs.Bhavna Karande. The petitioners had duly verified the title of Mrs.Karande to the said flat by relying upon the certificate dated 2nd November, 2007, issued by the advocate as well as the property search conducted through advocate vide said Search Report dated 8th May, 2014. The flat was not physically seized by the officers of Respondent no.2, as the same was in physical

possession of Mrs.Bhavna Karande, during the physical visit of the petitioners' on 11th May, 2014, nor any notice was displayed about the seizure of the said property. The flat was purchased by Mrs.Bhavna Karande from M/s.Kesar Realities Private Limited by obtaining loan from IndusInd Bank, and, hence, there was no question of any crime proceeds to purchase the said flat. It is further submitted that except stating that the provisions of MPID Act were invoked, there is nothing on record to establish the said fact. The proceedings are still pending before the Regular Court. It is further submitted that even assuming that the provisions of MPID Act are invoked in the present case, the procedure to attach the property as contemplated under the said provision is required to be followed.

5 Learned counsel for the petitioners relied on the decision of the Full Bench of this case in the case of ***Sudhir Vasant Karnataki (Supra)***, and, decision of this Court in the case of ***Motilal Gothra Vs.State of Maharashtra***, delivered in Criminal Appeal No.1218 of 2002.

6 Learned APP submitted that the relief prayed by the petitioners should not be granted. It is submitted that the petitioners had purchased the property from Mrs.Bhavna Karande, which was purchased out of proceeds of crime. The accused in the

said case have committed serious crime causing huge loss to the victims. The husband of Mrs. Bhavna Karande was arrested in the said case for offences punishable under Sections 420, 406, 342, 504, 506 read with 34 of IPC. Accused Yogesh Karande and other accused were involved in the said crime. It is further submitted that the provisions of MPID Act were invoked in the said case. Although initially the offences were registered under IPC, the permission to carry out further investigation in accordance with Section 173(8) was granted and subsequently, provisions of Section 3 of MPID Act as well as Section 66 (a), (b) and (c) of the Information Technology Act were added to the case. Learned APP tendered copy of the report dated 19th August, 2015, which was placed before the Court of Judicial Magistrate First Class, Vasai, indicating that charge-sheet was filed in case No.963 of 2013, and, subsequently, the provisions as aforesaid were added. It is submitted that the said application is taken on record and there is an endorsement on the said report dated 20th August, 2015, by the trial Court as "Seen". Learned APP also pointed out the report dated 22nd March, 2016, forwarded to the trial Court stating that the investigating machinery had submitted report dated 19th August, 2015 to the Court in respect to the additional charges. In the report dated 22nd March, 2016, it was mentioned that the said provisions may be added to the earlier charge - sheet. Learned APP pointed out the order of the Court as "Seen". Learned APP

also pointed out report dated 22nd March, 2018, addressed to the trial Court by the investigating machinery, wherein it was stated that the provisions of MPID were applied in this case and therefore the proceedings be transferred to the competent Court. Even on that report, there is an endorsement of "Seen", by the trial Court. Learned APP therefore submitted that although the charge-sheet was filed under IPC offences and assuming that the powers under Section 102 of Cr.P.C., cannot be utilised for immovable property, the provisions of MPID Act were invoked in the said provision, and, therefore, the property cannot released. It is further submitted that the petitioner ought to have taken precaution while entering into the said transaction. The property was seized under Section 102 of Cr.P.C. by recording panchanama and inspite of that the petitioners executed the said transaction. The prosecution has filed affidavit-in-reply of Anil Baburao Patil, Senior Police Inspector, attached to Manikpur Police Station, dated 6th July, 2016, and 24th April, 2017 as well as affidavit filed by Additional Superintendent of Police, Vasai, dated 31st March, 2018.

7 In the affidavit dated 25th July, 2016, it is stated that the subject flat was seized/sealed during investigation as it was purchased out of money collected from the victims by accused Yogesh Karande in the name of his wife and the flat owner is absconding. Petitioners had purchased the flat from Mrs.Bhavna

Karande on 16th May, 2014. It is submitted that the flat was purchased after it was sealed and attached by the police. The police have objection in handing over the property as the same was purchased by the accused using proceeds of crime and the case is pending before the Competent Court. It is pertinent to note that the deponent in the said affidavit has not explained as to how the property can be seized in accordance with Section 102 of Cr.P.C. The affidavit also does not indicate that the charge under MPID Act is invoked in the said proceedings. The second affidavit is filed by the same officer dated 24th April, 2017, reiterates what was stated in the earlier affidavit and in addition to that it is deposed that, report dated 19th September, 2015, was submitted before the trial Court for invoking provisions of MPID Act. It is further stated that Writ Petition No.4932 of 2014, was preferred by one of the victim for invoking the provisions of MPID Act, which was disposed of on 24th March, 2015, on the basis of the statement made by learned APP, on instructions, that the provisions of Section 3 of the MPID Act, are added and the investigation would be carried out. The affidavit filed by the Additional Superintendent of Vasai, District Palghar, mentions that the property was seized under the provisions of Section 102 of Cr.P.C. However, even the said affidavit also does not mention as to how the property can be seized under Section 102 of Cr.P.C.

8 On scrutiny of the documents which are the part of the petition and those placed on record by learned APP and by way of affidavit filed by the respondents, it is apparent that the flat premises were seized by invoking provisions of Section 102 of Cr.P.C. The affidavit does not explain as to how the immovable properties can be seized in accordance with the provisions of Section 102 of Cr.P.C. It is also noted that the petitioners were the bonafide purchasers of the property, and there is nothing to indicate that the petitioner had knowledge that the property is already seized by the police under the provisions of Section 102 of Cr.P.C. There is no record to indicate that the property was sealed or that notice was displayed on the premises. The petitioners had paid the entire consideration to the vendor. The document is registered. The search report was obtained. Police authorities have apparently not informed the Registrar about the seizure of the said property. In any case, the police does not have power to seize immovable property in exercise of powers under Section 102 of Cr.P.C. The Full Bench of this Court in the case of ***Sudhir Karnataki (Supra)*** has held that immovable property cannot be seized in exercise of powers under Section 102 of Cr.P.C. It would be relevant to quote paragraph 86 of the said decision:

“86 To sum up, we answer the reference thus:

Q.(a) Whether the words "any property" used in sub-section (1) of Section 102 of the Code of Criminal

Procedure, 1973 would mean to include "immovable property"?

Ans. We, therefore, hold that the expression "any property" used in sub-section (1) of Section 102 of the Code does not include immovable property. Question (a) is, therefore, answered in the negative.

Q.(b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?

Ans. No.

Q.(c) Which of the above two judgments lay down correct law in respect of the powers of a police officer to seize any immovable property under Section 102 of the Code of Criminal Procedure?

*Ans. The judgment in **Kishore Shankar Signapurkar v. State of Maharashtra (Supra)**, and not that in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors. (Supra)** lays down the correct law and the judgment of the Supreme Court in **State of Maharashtra v. Tapas D. Neogy (Supra)** has not been correctly interpreted in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors. (Supra)**. This question is, therefore, answered accordingly.*

*Q.(d) Whether the law laid down by the Supreme Court in case of **State of Maharashtra Vs. Tapas D. Neogy***

*(1999) 7 SCC 685 is restricted to seizure of bank accounts only or it can be extended to immovable property also, as interpreted by the Division Bench in the case of **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors. 2008 All M.R. (Cri.) 2133?***

*Ans. The law laid down by the Supreme Court in **State of Maharashtra Vs. Tapas D. Neogy (Supra)** is restricted to seizure of bank account and cannot be extended to immovable property also, as interpreted by the Division Bench in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors. (Supra).***

9 From the submissions put forth by the learned APP, and from the affidavits filed by the respondents on record it is submitted that the provisions of Section 3 of the MPID Act were added to the charge-sheet. On perusal of the report tendered by the learned APP, it can be seen that it was brought to the notice of the Court that the said Sections are added. It is also stated that the police who were empowered to carry out further investigation, were permitted to carry out under Section 173(8) of Cr.P.C. and thereafter the provisions of Sections under MPID Act as well as under Information Technology Act were added to the charge-sheet. The other report submitted by the Court indicate that the Court was requested to add the said charges to the charge - sheet. On both these reports the Court has passed an order of "Seen".

There is no order that any permission being granted by the Court to add the said charges. Assuming that the Court had granted such permission, it is pertinent to note that according to the Investigating Authority, further investigation is being carried out under Section 173(8) of Cr.P.C., and, therefore, if the additional charge is invoked in the proceedings, the police were supposed to carry out the investigation in respect to the said charges for the offences under the provisions of MPID and file a supplementary charge-sheet. However, the report merely indicate that the charges are added and the said charges be added to the charge - sheet. Apart from that by merely invoking the provisions of MPID Act, the property does not get seized/attached under the provisions of the said Act. For attachment of the property, the provision as prescribed under the MPID Act has to be followed. In the present case, the seizure was under Section 102 of Cr.P.C. which was illegal in accordance with the prevailing law and now it is tried to be submitted that on account of the additional charge under MPID Act, the property stands seized under the provisions of MPID Act. The seizure under Section 102 Cr.P.C., itself is illegal and since the investigating officer has no power to seize the immovable property, the same cannot continue to be seized.

10 Apart from that the proceedings are still pending before the Court of learned JMFC. It is seen that an application

was moved before the Court for committing the case to the Special Court. On going through the record and the report which were placed before the trial Court, it is noted that the investigating authorities had not followed the due process of law. In the case of ***Motilal Bothra (Supra)***, it is observed that the procedure contemplated under the provisions of MPID Act is required to be followed for attaching the property. Merely, submitting a report that additional provisions are invoked under the MIPD Act, would not amount to attachment of property. In the aforesaid decision, it was observed that the premises is required to be notified, which have been published in the official Gazette for the purpose of attachment, as required under Section 4 of the said Act. The scheme of the Act is that after recording reasons in writing, the Government shall issue an order by publishing it in the official Gazette, attaching the money or other property believed to have been acquired by such financial establishment either in forged name or in the name of any of other person from out of the deposit, collected by the financial establishment or it is transpired that such money or other property is not available for attachment or not sufficient for repayment of deposit. The Act further requires that amongst the property notified the designated Court can proceed to physically attach the property in exercise of provisions of Section 7 of the Act. On plain language of Section 7, it is seen that the designated Court can issue to the financial establishment

or to any other person whose property is attached and vested in the competent Authority, a notice accompanied by application and affidavit and of the evidence, if any, recorded, calling upon the said establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute. In other words, by virtue of notification under Section 4, the property symbolically attached and would stand vested in the government and it is that property which is physically attached, sealed and seized by the order of Court under Section 7 of the Act. Section 8 can be invoked when it is found that properties are already notified under Section 4. It is necessary for the designated Court first to record a finding that the property is already notified under Section 4 of the Act were inadequate to repay the amount payable to the depositors. To invoke the latter part of Section 8 of the Act, there has to be a reasonable cause for believing that the financial establishment has transferred any of the property otherwise than in good case and for good consideration. Applying the said principle in the present case, it can be seen that the proceedings had continued before the Court of learned Judicial Magistrate First Class. No procedure as contemplated under the provision of MPID Act is followed in the said proceedings. In the circumstances the orders passed by the Courts below are required to be set aside the petition deserves to be allowed.

11 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Writ Petition No.89 of 2016, is allowed;
- (ii) The impugned order dated 2nd May, 2015, passed by III Joint Judicial Magistrate First Class, Vasai, in OMA No.837 of 2014, as well as order dated 22nd September, 2016, passed by Additional Sessions Judge, Vasai, in Criminal Revision Application No.429 of 2015, are quashed and set aside;
- (iii) The seizure of the property viz. Flat No.202, situated on 2nd Floor in MESI Building in the project known as “Kesar Exotica” in accordance with Section 102 of Cr.P.C., is set aside and the said property is directed to be released in favour of the petitioners;
- (iv) Criminal Writ Petition No.89 of 2016, stands disposed of.

(PRAKASH D. NAIK, J.)