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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.90 OF 2019

Mrs.Disha Rajeev ..Appellant.

v.

The Office of Dy.Collector, Andheri-I, Mumbai & Ors. .Respondents.

Mr.Kevic Setalvad, Senior Counsel alongwith Mr.Burzin Somandy alongwith Mr.Shreenath Kamath alongwith Ms.Zara Sonpal for the Appellant.

Mr.H.J. Dedhia, APP for the State.

**CORAM : INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**

DATE : 1st FEBRUARY, 2019.

P.C.

1] Heard learned counsel for the respective parties.

2] The present Appeal has been filed seeking to challenge the order dated 16th July, 2018 passed in MPID Case No. 15 of 2016. The essential contention raised by the learned counsel for the Appellant at the outset was that though the Appellant was in custody of documents satisfying the MPID Court about the bonafide transaction and financial ability of the Appellant, for various reasons the Appellant has not been able to produce the said documents before the MPID Court for its consideration. In fact, in the present Appeal, several documents including bank statement have been appended. He further asserts on behalf of the Appellant that the Appellant

was a purchaser and had in fact sold certain properties in order to generate funds to make payment for the properties purchased by her. He subsequently asserts that all such payments were received and paid by way of cheques and the same is reflected in their respective bank accounts.

3] We find from paragraph 12 of the impugned order that the learned Special Judge arrived at a finding that,

“Neither the applicant filed on record any supporting document showing that she and her husband was possessing such huge amount at the time of sale transaction nor she filed on record any document showing that the said amount or any part of it is deposited by the accused persons in their account. So also the applicant not filed on record gift deed dated 20.06.2014. There appears no reason when the applicant and her husband jointly purchased suit properties, why her husband executed gift deed in her favour”.

Apart from the above finding, the learned Special Judge has concluded in para 13 that,

“Applicant neither mentioned about her profession, source of income nor the profession and source of income of her husband”.

4] In respect of both these observations, learned counsel for the Appellant submits that the husband of the Appellant has been working for one of the world's leading security Company and even prior to that, he was working on a high post in an Airline Company and the appellant has also filed various documents which she claims, she could not produce before the MPID Court.

5] Learned APP for the State fairly submits that if the appellant has procured certain documents, the same should be considered by the MPID Court and should not at the first instance be considered by the Appellate Court.

6] Accepting the submissions made in this behalf by both the learned counsels, we are of the considered view that the matter should be reconsidered by the MPID Court and a further opportunity ought to be granted to the Appellant to file the documents, if any, and for such purpose we set aside the impugned order dated 16th July, 2018 passed in MPID Case No. 15 of 2016. We remit the matter back to the learned Additional Sessions Judge, MPID Court and permit a period of two weeks to file a Petition before the MPID Court alongwith all the documents that she intends to rely upon.

7] We make it clear that we have not expressed any opinion on any of the document appended to the present Appeal in view of the fact that we consider it just and proper that all such documents ought to be considered at the first instance by the Trial court. Appeal is allowed to the extent indicated hereinabove.

(SARANG V. KOTWAL, J)

(INDRAJIT MAHANTY, J)