

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1357 OF 2018

Mohan Hotchand Khanchandani ... **Appellant**

V/s.

The State of Maharashtra & Ors. ... **Respondents**

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Mr.Bharat Vaishnawa i/b. M/s.Bharat Vaishnawa & Co, Advocate
for the Appellant.

Mr.V.B.Konde-Deshmukh, APP for the Respondent/State.

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**CORAM : INDRAJIT MAHANTY &
A.M.BADAR JJ.**

DATED : 27st JUNE 2019.

P.C. :

1 Heard the learned Counsels for the respective parties.
The present appeal have come to be filed against the Order dated
21/09/2018 in terms of application filed by the
appellant/applicant seeking relief of refund of original Fixed
Deposit Receipt of Rs.2,50,000/- in favour of the applicant came
to be rejected.

2 The learned Counsel for the appellant submits that the
appellant is a bona fide purchaser of the shop room from the
accused persons namely Adolf Henry Fernandes and Mrs.Aninha

A. Fernandes, who are accused Nos.1 and 2 in the connected MP.I.D.Case No.08 of 2013. In the course of the aforesaid proceedings the shop room purchased by the petitioner in the year 2004 i.e the shop No.14/A/2 situated at Amay Co-operative Housing Society, New Mahada Colony, Mahakali Caves Road, Andheri (East), Mumbai-93 came to be attached. When the appellant/applicant moved the designated Court for release of the property from attachment, the same was allowed to be released by an Order dated 16/06/2015. The applicant was directed to deposit a FDR in the sum of Rs.5,00,000/- as a condition precedent for handing over possession of the property to the applicant. Challenging the said Order, the present appellant had approached this Court in Criminal Appeal No.1140 of 2015 which came to be disposed of vide Order dated 16/09/2016 modifying the Order of the designated Court to the extent of directing that the appellant to provide a fixed deposit but for the sum of Rs.2,50,000/- and that fixed deposit will be kept with the Registrar, City Civil and Sessions Court, Greater Mumbai and further direction to the applicant that the applicant shall not create any third party right of whatsoever in nature in respect of concerned property. This Order was remained in operation till filing of charge-sheet.

3 It is stated on behalf of the appellant that during pendency of the proceedings, accused No.1 Adolf Henry Fernandes

has passed away, but no charges came to be framed since Aninha A. Fernandes remains absent and has been declared as “proclaimed offender”. In the light of circumstances as noted herein above, the learned Counsel for the appellant submits that the fixed deposit of the appellant ought to be released in his favour.

4 The learned Counsel appearing for the State opposed that prayer and submits that the earlier Order of the High Court remains in force and no claim for refund of Fixed Deposit Receipt can, at present, be entertained since the accused has still been absconding.

5 On the perusal of the submissions advanced before this Court, we find that in the Order, the Special Judge, MPID Act have recorded as follows :

“At that stage, the applicant was not held a mala-fide transferee”

In other words it is clear that the attachment of the property purchased by the appellant in the year 2004 is yet to come under the purview of the designated Court and such a situation would arise only if the application under Section 8 of the MPID Act, 1991 is moved. In other words, the mandate of law as prescribed under Section 8 of the MPID Act has to be resorted to and complied with what is condition precedent for declaring any

transfer by the accused to be mala-fide. It appears that crime has been registered in the year 2005 and the MPID case is going on since 2013 and for the reasons as recorded in the impugned Order, the charges are yet to be framed, whereas one of the accused is deceased and two others are absconding.

6 We are of the considered view that property held by the appellant can only come within the purview of the MPID Act if a situation as required under Section 8 of the MPID Act arises for consideration. Admittedly, the petitioner purchased the property through a registered sale deed in the year 2004 i.e. even prior to the registration of the crime. Consequently, in view of the fact that the surviving accused persons are still absconding and have been declared as “proclaimed offender”, we are of the considered view that no purpose would be served if the fixed deposit of amount of Rs.2,50,000/- deposited by the appellant remains with the designated Court indefinitely.

7 However, keeping in view the fact that possibility of the proceedings under Section 8 of the MPID Act, against the property purchased by the appellant continues to exist. We, therefore, take note of the submissions of the learned Counsel for the appellant that he is ready and willing to give an undertaking before the designated Court that he will not create any third party right over the said property. On such submissions and on consideration thereof, we pass the following Order :

ORDER

- (i) The Order dated 21/09/2018 passed by the Special Judge, MPID Act in Miscellaneous Application No.1218 of 2017 arising out of MPID Case No.08 of 2013 is quashed and set aside.

- (ii) The Registrar, City Civil and Sessions Court, Greater Mumbai is directed to refund the fixed deposit deposited by the appellant subject to the filing of the undertaking by the appellant as noted herein above in favour of the designated Court.

- (iii) With the aforesaid directions, the appeal stands disposed of.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)