

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

CRIMINAL WRIT PETITION NO.5532 OF 2018

Swati Sandeep Sinkar & anr. ... Petitioners

Vs.

The State of Maharashtra & Ors. ... Respondents

**With
CRIMINAL WRIT PETITION NO.5548 OF 2018**

Arun Vasant Shinde ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr.P.G. Pandey for the Petitioners in WP/5532/2018

Mr.Shyamrishi Pathak for Petitioner in WP/5548/2018

Ms.Veera Shinde, APP, for the Respondent – State in WP/5532/2018

Mr.A.R. Patil, APP, for the Respondent – State in WP/5548/2018

Mr.Sushil Kamble, Sr.P.I., Tilaknagar police station – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 3, 2019

P.C.:

1. Writ Petition No.5548 of 2018 is filed by the complainant Arun Vasant Shinde and Writ Petition No.5532 of 2018 is filed by the petitioners, who are third parties. Writ Petition No.5548 of

2018 challenges the order dated 21.3.2018 passed by the learned Metropolitan Magistrate, 57th Court, Kurla, Mumbai, below exhibit 1 in 875/MISC./2016 which was filed for defreezing their account. Writ Petition No.5532 of 2018 challenges the order dated 4.5.2017 passed by the learned additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai, which application was filed by the petitioners Mr. and Mrs.Sinkar under section 451 of Code of Criminal Procedure in relation to C.R. No.225 of 2015 registered with the Govandi police station, for return of recovered cash amount of Rs.1 lakh and the seized amount of Rs.37 lakhs in two bank accounts.

2. One Arun Shinde had lodged complaint of cheating and forgery and fraud i.e., under sections 420, 465, 467, 468, 471 r/w section 34 of the Indian Penal Code against one Nilesh Thakur and his associates. During the investigation, the police found that an amount of Rs.18 lakhs was transferred by Mr.Nilesh Thakur in the account of the present petitioners Mr. & Mrs.Sinkar (for short, hereinafter referred to as “the applicants”). So the police sealed that account. The amount of Rs.1 lakh was ordered in his favour and prayed for return of the amount of Rs.37,50,000/- which was

seized by the police. The said payer was rejected and hence, Writ Petition No.5548 of 2018 is filed.

3. The learned Judge has rejected the application for defreezing the account in favour of the applicants Mr. and Mrs.Sinkar. He also rejected the prayer of returning Rs.37 lakhs or any other amount to the complainant.

4. Mr.Pandey, the learned Counsel for the petitioners in Writ Petition No.5532 of 2018, submitted that Mr.Sinkar is in I.C.U. due to blood clot in the month of December, 2018 and he is required to undergo Angioplasty and hence, he needs money.

5. Heard submissions of both the parties and also the learned Prosecutor. The facts of the case are to be noted in brief. Both the applicant Mr.Sinkar and the complainant Arun Shinde are the victims and are cheated by one Nilesh Thakur, who is the accused in C.R. No.225 of 2015 and is also an accused in an MPID case, which was registered by some third party. Nilesh Thakur has cheated many persons and is facing prosecution for the offence of cheating under the Indian Penal Code and also under MPID Act. The applicants have paid a total amount of Rs.28,60,000/- in the

year 2013 for purchase of a flat from Nilesh Thakur and one co-accused Talreja. Neither the possession of the said flat was delivered nor was the amount given to the applicants except payment of Rs.18 lakhs to the applicants by Mr.Thakur during 23.4.2015 and 2.5.2015. (The learned Counsel for the petitioners has pointed out that the said amount was transferred from the account of the wife of the accused Thakur to the applicants). The complainant Arun Shinde also booked a flat and paid a total amount of Rs.28 lakhs to Nilesh Thakur and Talreja during 23.3.2015 till 18.5.2015. The amount was paid in cash so also by cheque. It is contended that the amount of Rs.20,50,000/- out of Rs.38 lakhs was paid by account transfer and the remaining amount was paid in cash by the complainant. On realisation of cheating, the complain Arun Shinde approached the Govandi police station and gave complaint against the accused which was registered at C.R. No.225 of 2015 with Govandi police station. The police carried out investigation in which the accounts of Nilesh Thakur were sealed and also as the officer came across the transfer of Rs.18 lakhs from the account of the wife of Thakur to the account of the applicants, also freezed the account of the applicants. Hence, both the parties i.e., the complainant and the

applicants made respective applications under section 451 of the Code of Criminal Procedure for return of the said property, which were rejected. Hence, these petitions.

6. The fact that both the parties have made payment to the accused for purchase of the flat is admitted. Both these parties have bonafide claimed against the accused for their respective amounts. However, at this stage, it is necessary to decide who is having a better claim, prima facie. The amount of Rs.18 lakhs which was found in the account of the applicants is admittedly transferred to their accounts from the account of the wife of the accused. The complainant Arun Shinde has started paying money for purchase of the flat from 23.3.2015 and continued to pay from time to time till 18.5.2015. He has paid a total amount of Rs.38,56,000/-. The amount of Rs.18 lakhs was refunded by the accused to the applicants from 23.4.2015 till 2.5.2015. Money does not carry identity mark unless it can be shown that the payment was made by cheque.

7. In view of the time sequence from 23.3.2015 till 2.5.2015, it can be easily gathered that some portion of the amount which was paid by the complainant might have been transferred by the

accused to the applicants. Therefore, I am of the view that the amount, which was paid by cheque by the complainant, can be saved and the remaining amount can be defreezed in favour of the applicants. It is contended and *prima facie* shown that the applicants have paid the amount of Rs.16,32,000/- by cheque. Thus, the accused is liable to pay only Rs.16,32,000/-. The accused in fact has refunded Rs.18 lakhs. Accordingly, the amount of Rs.16,32,000/- is defreezed from the account bearing No.003200100027348 with Saraswat Cooperative Bank Ltd., Chembur branch, subject to furnishing undertaking and a bond in the like amount that the amount will be deposited in the trial Court as and when required. An amount of Rs.50,000/- is to be given to Arun Shinde, the complainant and the remaining amount of Rs.1,18,000/- out of Rs.18 lakhs shall remain freezed. It is made clear that this order is subject to the final outcome of the trial.

8. Writ Petitions are disposed of in the above terms.

(MRIDULA BHATKAR, J.)