JPP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1375 OF 2018
WITH
CRIMINAL APPEAL (ST.) NO. 410 OF 2019
WITH
CRIMINAL APPLICATION NO. 444 OF 2019
IN
CRIMINAL APPEAL (ST.) NO. 410 OF 2019
WITH
CRIMINAL APPEAL (ST.) NO. 437 OF 2019
WITH
CRIMINAL APPLICATION NO. 468 OF 2019
IN
CRIMINAL APPEAL (ST.) NO. 437 OF 2019

Seema Arunkumar Sharma … Appellant/Applicant

V/s.

The State of Maharashtra and Anr. … Respondents

Mr. Murtuza Nazmi i/b. Dilip Shukla for the Appellant/Applicant

Ms. Rebecca Gonsalves, Special Counsel for the Respondent - State

CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.

DATE : 1 DECEMBER 2021

P.C. **:-**

These three Criminal Appeals are filed by Seema Arunkumar Sharma in respect of the attachment of the bank account which arose from the proceedings taken under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) (MPID) Act, 1999 in Special Case No. 1 of 2014 in respect of Lotus Refineries Pvt. Ltd.

2. The Criminal Appeal No. 1375 of 2018 challenges the order passed by the learned Special Judge under the MPID Act on 21 September 2018 rejecting the Misc. Application No. 865 of 2018. The Appellant had sought to challenge the action of the Respondents of attaching/freezing the saving bank account of the Appellant. The Criminal Appeal (St.) No. 410 of 2019 is filed to challenge the order dated 12 August 2016 filed by the learned Special Judge rejecting the Misc. Application No. 375 of 2015 which was filed for challenging the action of attaching/freezing the bank account of the Appellant.

3. In Criminal Appeal (St.) No. 410 of 2019 there is a delay of 876 days which is sought to be condoned by filing Criminal Application No. 444 of 2019.

4. Criminal Appeal (St.) No. 437 of 2019 seeks to challenge the order dated 5 June 2018 for identical subject matter as

above. There is a delay of 224 days in filing the Appeal which is sought to be condoned by filing Criminal Application No. 468 of 2019.

5. According to the prosecution one Lotus Refineries Pvt. Ltd. was a member of National Stock Exchange Ltd. From the trading on the National Stock Exchange the total outstanding as on 31 August 2013 of Lotus Refineries Pvt. Ltd. was around Rs. 252 crores. On 27 September 2012, the Appellant Seema Sharma opened a Bank Account No. 15500110027776 with UCO Bank, Marol, Andheri (E), Mumbai. During the period between 27 September 2002 to 9 October 2013, amount of Rs.86,06,301/- was transferred to the account of the Appellant from the account of Louts Refineries Pvt. Ltd. The Government of Maharashtra issued a Notification under the MPID Act on 28 August 2014 and 27 bank accounts including the bank account of the Appellant were attached. The Competent Authority filed an application under Section 5 of the MPID Act to the Special Court on 9 April 2015 for making the attachment absolute. The Appellant alongwith her husband Arunkumar Sharma filed an application M.A.No. 375 of 2015 for defreezing of the account. By order dated 4 March 2016, the attachment of 27 bank accounts was made absolute by the MPID Court, Mumbai. The order of making the attachment absolute was challenged by Lotus Refineries Pvt. Ltd. by filing a Criminal Appeal No. 344 of 2016 in this Court. The Appeal was disposed of as

withdrawn on 9 October 2017 with liberty to file an appropriate application.

6. In the meanwhile, on 12 August 2016 the Application No. 375 of 2015 filed by the Appellant and her husband were rejected. This order is now challenged in Criminal Appeal (St.) No. 410 of 2019.

7. The Appellant filed another application seeking the same relief which was rejected on 5 June 2018 and thus, the Appellant filed Criminal Appeal (St.) No. 437 of 2019.

8. Third application was filed by the Appellant for same relief which was rejected on 21 September 2018.

9. Thus, as can be seen from this narration, the Appellant whose application was rejected on 12 August 2016 has thereafter, filed two more applications which have been rejected and it is the rejection of the third application that the Criminal Appeal No. 1375 of 2018 was filed. It is thereafter the other two Appeals have been filed with delay of 876 and 224 days as narrated above.

10. We note that the Appeal No. 1375 of 2018 which was filed first in point of time was heard from January to February 2019. Thereafter, the other two Appeals with condonation of delay applications have been filed.

11. The learned Special Public Prosecutor has taken objection to the applications for condonation of delay and has also submitted that merely because making repeated applications, the same cause cannot be sought to be espoused over and over and cannot be made ground for condonation of delay. The contention of the learned Counsel for the Appellant is that they have a good case on merits and there is a breach of procedure under Section 7 of the MPID Act and therefore, it would be in the interest of justice that the delay is condoned and all the three Appeals are heard. According to the Appellant even though she had filed an application which was in essence an objection under Section 7(1) of the MPID Act, the learned Judge without considering these objections has held that since the attachment has become absolute, the objections cannot be considered.

12. While we consider the applications for condonation of delay, one admitted position needs to be kept in mind is that in the meanwhile the substantial amount in respect of Lotus Refineries Pvt. Ltd. and entire amount attached from the account of the Appellant has now been disbursed to the investors. It is at this stage the Appellant seeks to question the order making the attachment absolute.

13. Now, we turn to the Application No. 444 of 2019 to find out whether any cause is made out for condoning the delay of

876 days, that is of almost three years. The reason given in the application is in paragraph 15. In paragraph 15 the Appellant has stated that the Appellant is not involved in the crime and the Appellant was taking legal advice from her family and she was a lay person, she was pursuing the remedies as advised by the in-laws in Chandigarh. Reference is made to subsequent application and that the matter was handled by the husband and this is a reason given for condonation of delay.

14. The magnitude of the financial scam as alleged, is narrated in the affidavit in reply filed in the Criminal Appeal No. 1375 of 2018. In the reply filed by the Respondent – Authority, the methodology of trading on the market with the National Stock Exchange Ltd. is stated. Bare perusal of the narration shows that it was a complicated financial scam. It is not stated that the Appellant was uneducated rustic villager. Therefore, the simplistic explanation of the Appellant that she was a lay person relying on her husband and not aware of the legal procedure cannot be accepted. Apart from the reason given in paragraph 15, there is no other reason given for condoning the delay of 876 days. This delay cannot be considered as of short duration. The Appellant was fully aware of the procedure as the Appellant kept on filing subsequent applications. Therefore, according to us there is absolutely no cogent reason, much less a substantial cause, pleaded for condoning the delay of 876 days. Further due to inaction of the Appellant in challenging the first

order, in the meanwhile, the amount stands disbursed to the investors. The arguments on merits of the matter will not arise if no sufficient cause is made out for condonation of delay. Therefore, we are not inclined to condone the delay of 876 days in filing the Appeal (St.) No. 410 of 2019. Similar reasoning would apply to the Appeal (St.) No. 437 of 2019 wherein the Application No. 468 of 2019 is filed seeking condonation of delay of 224 days, that is almost one year. In this application also reason given is the same. In fact it is a copy of the reason given in the other Criminal Application No.444 of 2019. In the light thereof, the Criminal Application No. 468 of 2019 and Criminal Application No. 444 of 2019 are rejected. Consequently, the Criminal Appeal (St.) No. 410 of 2019 and Criminal Appeal (St.) No.437 of 2019 stand dismissed.

15. Now, we turn to the Criminal Appeal No. 1375 of 2018 which is filed in time. We have noted as above the submission of the Appellant in brief. Now, in view of the dismissal of Appeal (St.) Nos.410 of 2019 and 437 of 2019, the challenge in this Appeal to the order dated 21 September 2018 will not arise as the same application on identical grounds was made twice earlier to the learned Special Judge and the learned Special Judge on both counts had rejected the application by giving identical reasoning. By dismissing the Appeals wherein these orders were challenged, the orders passed by the learned Special Judge earlier is confirmed.

Since there is no sufficient reason to condone the delay of 876 days in challenging the first order of 12 August 2016 and the Appeal is dismissed on that count, then the subsequent challenge seeks to raise the same issue cannot arise in the light of dismissal of the Appeal challenging the first order. Merely because repeated applications are filed, the Appellant cannot seek to re-agitate the issue which stand closed. Apart from this position, we have noted that the amounts have already been disbursed to the investors. With these reasoning, the Criminal Appeal No. 1375 of 2018 is also dismissed.

16. Consequently, the Criminal Appeals and the Criminal Applications stand dismissed.

SARANG V. KOTWAL, J. ***NITIN JAMDAR, J.***

JYOTI PRAKASH PAWAR

Digitally signed by JYOTI PRAKASH PAWAR
Date: 2021.12.06 11:28:39 +0530