

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

CRIMINAL APPEAL NO. 696 OF 2021

Nita Gajendra Shinde	...Appellant
Versus	
The State of Maharashtra	...Respondent

Mr. Ajay Joshi for the Appellant

Mrs. Veera Shinde, A.P.P for the Respondent–State

***CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.
THURSDAY, 16th JUNE 2022***

P.C. :

1 At the outset, learned counsel for the appellant seeks leave to amend to correct the name of the appellant's husband. Leave granted. Amendment to be carried out forthwith.

2 Heard learned counsel for the parties.

3 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives service on behalf of the respondent–State.

4 By this appeal, the appellant seeks quashing and setting aside of the impugned order dated 16th December 2020 passed by the learned Special Judge, Pandharpur in Criminal Misc. Application No. 716/2020. Learned counsel for the appellant submits that the appellant is the owner of a house i.e. Plot No. 29 out of Survey No. 103/1+2/1D/1+2, Link Road, Pandharpur, District Solapur. He submits that the appellant had let out the first floor of the said house, to Matrubhumi Realtech Development Limited, on leave and license. He submits that after the police registered a case as against the said Matrubhumi Realtech Development Limited and its Directors under the provisions of the Indian Penal Code and MPID Act, the police sealed the said premises. He submits that the appellant is neither an accused nor a witness in the said case. He submits that the learned Judge rejected the appellant’s application seeking release of the said

premises sealed by the investigating agency, for no bonafide reason/ground.

5 Learned counsel for the appellant has tendered an undertaking of the appellant wherein, the appellant has undertaken not to create any third party rights or transfer any right, in the said property, without the leave of the trial Court. The said undertaking is taken on record and marked `X' for identification.

6 Learned A.P.P does not dispute the fact, that the appellant is not an accused/nor a witness in the said case. She submits, on instructions, that the Economic Offence Wing has no objection for de-sealing the said premises. She however, submits that the appellant be directed not to create any third party rights in the said property, till the disposal of the trial or without the leave of the trial Court.

7 Perused the papers. It appears that the appellant is the owner of a ground + one building situated at Plot No. 29, out of

Survey No. 103/1+2/1B/1+2 at Manisha Nagar at Pandharpur. The appellant has annexed at Exhibit `A' a copy of the registered Sale Deed by which the appellant had purchased the property on 6th November 1999. It appears that the appellant had given the first floor of the said premises on leave and license to Matrubhumi Realtech Development Limited, for conducting their business. It appears that thereafter, a case was registered as against the said Company and its Directors for the alleged offences punishable under Sections 420, 406, 409 r/w Section 34 of the Indian Penal Code and under Sections 3 and 4 of the MPID Act. The said case was registered vide C.R. No. 124/2020 with the Pandharpur Police Station.

8 During the course of investigation, the said premises i.e. first floor which was given on leave and license by the appellant to the said Matrubhumi Realtech Development Limited was sealed by the police. Admittedly, the appellant is not an accused in the said case. The police have no objection for returning the said premises to the appellant, however, subject to certain conditions.

9 The appellant has in the undertaking tendered today, undertaken to this Court, that the appellant will not transfer the title/ownership of the said property in favour of any third party without the prior leave of the Court.

10 Considering the aforesaid, there is no impediment in allowing the appeal.

11 Accordingly, the impugned order dated 16th December 2020 passed by the learned Special Judge, Pandharpur in Criminal Misc. Application No. 716/2020 below Exhibit 1 is quashed and set-aside. The police to forthwith de-seal the said property of the appellant, so as to enable the appellant to use the same. The appellant shall, however, abide by the undertaking that she or any member of the family will not transfer the title/ownership of the said property in favour of any third party, till the disposal of the trial or without the leave of the trial Court.

12 The appeal is allowed. Rule is made absolute on the aforesaid terms.

13 Appeal is accordingly disposed of.

14 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.