

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

CRIMINAL APPEAL NO.289 OF 2021

Prakash Shrivastava ...Appellant
Versus
Shraddha Suresh Bane
Through her Constituted Attorney -
Suresh Ganpatrao Bane and Anr. ...Respondents

Mr. Vikram Sutaria a/w Mr. Mithilesh Mishra, for the Appellant.

Mr. Tanmay T. Jadhav a/w Mr. Mohan Talati, for the Respondent No.1.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent No.2 – State.

***CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.***

DATE : 14th JUNE 2022

P.C. :

1. At the outset, learned counsel for the appellant seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out forthwith.
2. Heard learned counsel for the parties.

3. By this appeal, the appellant has sought the following substantive relief:-

“c. This Hon'ble Court be pleased to quash and set aside the orders dated 5/02/2021 and 26/02/2020 passed by the Ld. Trial Court in Special Case MPID No. 11/2016, to the extent that it directs the Appellants to remain present before the Ld. Trial Court and further directs the Respondent No. 2 to investigate and take steps under the MPID Act, 1999.”

4. Learned Counsel for the appellant submits that the learned Special Judge who has passed the aforesaid impugned orders has misdirected himself and has misinterpreted the order dated 26th June 2014 passed by this Court (Coram: Mrs.Mridula Bhatkar, J.) in Criminal Application No.2007 of 2004. He submits that infact, when the said order was passed the proceeding before the MPID Court had already come to an end i.e. on 2nd April 2007, however, as neither the learned counsel for the applicants nor the learned counsel for the respondent Nos.1 and 2 in the said application were aware of the same, the same was not brought to the notice of this Court, pursuant to which, the said order was passed. Mr. Sutaria, further submits that

the proceeding presently pending before the learned Special Judge is a proceeding under Section 138 of the Negotiable Instruments Act (N.I. Act). He submits that merely because the said case i.e. 138 case was transferred by this Court to the learned Special Judge before whom the MPID case was pending, cannot be a ground for considering the said 138 case as a case under the Maharashtra Protection of Interest of Depositors Act (MPID Act). He submits that the learned Special Judge will have to necessarily try the said 138 case, as a case under Section 138 of the N.I. Act, and, not under the MPID Act.

5. Learned Counsel for the respondent No.1 vehemently opposes the appeal. The learned counsel for the respondent No.1 has tendered an affidavit-in-reply on behalf of the respondent No.1 dated 14th June 2022. The same is taken on record. According to the learned counsel for the respondent No.1, there is no impediment for the learned Special Judge to direct the 138 case to be investigated as a MPID case.

6. Perused the papers. A private complaint was filed by the respondent No.1 as against the appellant and others, alleging an offence punishable under Sections 138 r/w 141 of the N.I. Act. The appellant is the original accused No.3 in the said case i.e. C.C. No.589/SS/2002. It appears that the said case i.e. the 138 case was initiated by the respondent No.1 as two cheques issued by Golden Glades Limited were dishonoured in 2002. It appears that the said case was filed by the respondent No.1 i.e. for dishonour of the cheque in the Bandra Court having competent jurisdiction to hear and decide the case. It also appears that during the said period i.e 2002, a complaint/FIR i.e. C.R. No.62 of 2002 was lodged as against the company – Golden Glades Limited and its directors with the Shivaji Park Police Station, Mumbai, under the provisions of the Indian Penal Code and MPID Act. The said C.R., being C.R. No.62 of 2002 registered with the Shivaji Park Police Station, Mumbai was transferred to the E.O.W and renumbered as C.R. No.128 of 2002. It appears that the case against the said accused (not the appellant) proceeded before the MPID Court and the case was finally decided by the learned

Special Judge, MPID Court vide order dated 2nd April 2007.

7. It appears that in the interregnum, the company – Golden Glades Limited and others filed an application being Criminal Application No.2007 of 2004 seeking transfer of C.C. No.589/SS/2002, which was pending on the file of the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai (138 case), to the Court of the learned Special Judge, who was hearing the MPID case i.e. MPID Special Case No.29 of 2004. This Court vide order dated 26th June 2014 allowed the said application and transferred the 138 case which was pending before the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai to the learned Special Judge, MPID Court, Greater Mumbai. It appears that when the said order was passed the proceeding i.e. MPID case was already over on 2nd April 2007 and that none of the parties i.e. the learned counsel for the applicants therein and the learned counsel for the respondent Nos.1 and 2 therein, brought the same to the notice of this Court.

8. It appears from the order dated 26th June 2014 that it was on an application filed by Golden Glades Limited and others in 2004 seeking transfer of the 138 case to the Special Court, that the said order was passed. In the said order there was no direction to treat the 138 case as a MPID case.

9. In these circumstances, the learned Special Judge could not have passed the impugned order dated 26th February 2020, issuing notice to the retired Investigating Officer, ACP Chavan, through EOW to remain present in the matter, so that the matter can proceed further, in accordance with the direction given by this Court in Criminal Application No.2007 of 2004. By the said order the accused Anand Shrivastav and Prashant Shrivastav were also directed to remain present on the next date. It appears that on 5th February 2021, the learned Special Judge has in roznama recorded that the EOW is expected to proceed further as per the directions of the High Court and take steps under the MPID Act.

10. This is not the purport of the order dated 26th June 2014. It appears that an application was filed by the company and others in 2004 seeking transfer of the 138 case i.e. C.C. No.589/SS/2002 which was pending before the Bandra Court to the Special Court, where the MPID case was pending. The learned Special Judge had to necessarily try the 138 case before it, as a 138 case and not as a case under the MPID Act. The learned Judge has clearly misread and misinterpreted the said order dated 26th June 2014, passed by this Court.

11. Considering the aforesaid, the impugned order dated 26th February 2020, by which the learned Judge issued notice to the retired Investigating Officer, ACP Chavan, through EOW to remain present in the matter, so that the matter can proceed further, in accordance with the direction given by this Court in Criminal Application No.2007 of 2004 as well as the order dated 5th February 2021 recording in the roznama that the EOW is expected to proceed further as per the directions of the High Court and take steps under the MPID Act, cannot be sustained and as such are quashed and set aside.

12. The learned Judge to conduct the proceeding i.e. C.C. No.589/SS/2002 transferred before the said Court, in accordance with law, as a 138 case.

13. Since the case is of the year 2002, we request the learned Special Judge to dispose of the said proceeding i.e. C.C. No.589/SS/2002 (138 case), as expeditiously as possible and in any event within 6 months from the date of receipt of this order.

14. Appeal is allowed in the aforesaid terms and is accordingly disposed of.

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.