

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

CRIMINAL APPEAL NO. 727 OF 2022

Shahaji Yashwant Salgar Appellant
Versus
The State of Maharashtra Respondent

Mr. Vikrant V. Phatate, Advocate for the Appellant.
Mr. S. R. Agarkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd DECEMBER, 2022

P.C. :

1. The appellant has challenged the order dated 20.06.2019 passed by the Additional Sessions Judge, Solapur in Criminal Misc. Application No.82/2018.

2. Heard Shri Vikrant Phatate, learned counsel for the appellant and Shri S. R. Agarkar, learned APP for the State.

3. The contention of the appellant in this appeal is that the said order was passed by the Additional Sessions Judge, Solapur in his capacity as the Judge in-charge of the matters under the Maharashtra Protection of Interest of Depositors (in

Financial Establishments) Act, 1999 (for short, 'MPID Act'). The case of appellant is that he is the registered owner of the property situated at 3rd floor, Shriyash Heights, at Survey No.721A, having built sup area 823 sq. ft. at South Kasba, Solapur. He had entered into the leave and license agreement with M/s. Thiripura Chits Private limited represented by one Sunil Revanshidha Hiraje. The leave and license agreement was executed on 5.10.2016 for a period of thirty six months.

4. After that C.R.No.133/2018 was registered against Sunil Hiraje and others under Sections 406, 420 read with 34 of the Indian Penal Code and under Sections 3 & 4 of the MPID Act. Pursuant to the registration of the F.I.R., the investigation started and the investigating agency attached that property. The appellant preferred the aforementioned Criminal Misc. Application No.82/2018 before the trial Court challenging attachment of said property.

5. Learned counsel for the appellant submitted that the attachment of the property is completely illegal. The investigating agency has no authority to attach any immovable

property under the provisions of Code of Criminal Procedure, 1973. He relied on the judgment of the Hon'ble Supreme Court in the case of **Nevada Properties Private Limited, through its Directors Vs. State of Maharashtra and another**¹ as well as the judgment of Full Bench of this Court in the case of **Sudhir Vasant Karnataki Vs. State of Maharashtra and others**². He submitted that even the provisions of the MPID Act from Section 4 onwards for attachment of property were not followed and, therefore, sealing and attachment of the aforesaid property is completely illegal.

6. Learned APP filed an affidavit of the Police Inspector Shri Chandrakant Wable as per directions of this Court. This Court had directed the investigating agency to justify their action by relying on provisions of law.

7. I have perused the affidavit-in-reply. In the entire reply no provisions of law was mentioned which enabled the investigating agency to attach immovable property. There is no

1 (2019) 20 SCC 119

2 2011 ALL MR (Cri) 96 [FULL BENCH]

reference to the law laid down by the Hon'ble Supreme Court and this Court in the aforementioned decisions. The only contention raised is that the appellant is not entitled to get possession of the property under Section 457 of the Cr.PC.

8. Learned APP also could not point out any provision under any law enabling the investigating agency to attach the appellant's property in the present circumstances.

9. Considering this position, it is clear that the investigating agency was not empowered to attach the immovable property under the provisions of the Code of Criminal Procedure, 1973. There is nothing to show that the provisions under the MPID Act, particularly those under Sections 4, 7, 8, 9 or 10 were followed in any manner.

10. In this view of matter, the action of the part of the investigating agency to attach the appellant's property, which is the subject matter of this appeal, is completely unjustified and unsupported by any provision of law. It is an admitted position that the appellant is not involved in the offence. Therefore, the

appeal deserves to be allowed to that extent. Hence, the following order :

:: O R D E R ::

- i. The attachment of the appellant's property which is described as situated at 3rd floor, Shriyash Heights, at Survey No.721A, having built up area 823 sq. ft. at South Kasba, Solapur, is declared as illegal.
- ii. The investigating agency shall immediately remove attachment on that property. It is made clear that the appellant as well as the investigating agency are free to take further steps in accordance with law.
- iii. Criminal Appeal is disposed of in the aforesaid terms.

Digitally signed
by
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PRAKASHRAO
DESHMANE
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2022.12.06
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(SARANG V. KOTWAL, J.)

Deshmane (PS)