

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 394 Of 2022
WITH
INTERIM APPLICATION NO. 3085 of 2021
IN
CRIMINAL APPEAL NO. 394 OF 2022

Amita Prashant Kulkarni .. Appellant
Versus
State of Maharashtra and anr .. Respondents

...

Mr. Ranit Basu i/b Ms.Sneha Herwade for the applicant.
Mr.S.R. Agarkar, APP for the State.
API Mahesh Gawade, EOW, Unit-8, Mumbai.

CORAM: BHARATI DANGRE, J.
DATED : 22nd AUGUST, 2023

P.C:-

1 The Appeal is filed u/s.11 of the MPID Act, calling in question the order dated 12/12/2019 passed by the MPID Court, in MPID Special Case No.13/2003, attached thereby, making the attachment of Row House No.5, Gaon Kalmath, Tal.Kankavli, District Sindhudurg, absolute.

 The impugned orders also direct that the property shall be put to auction. This Court by order dated 7/4/2022, had stayed the auction sale until further orders.

This order continue to remain in operation till date.

2 Heard learned counsel for the petitioner and learned APP Mr.Agarkar, for respondent nos.1 and 2.

The appellant claim that she is the owner of Row House No.5 described as “Sanchyani Nagari Row House No.5” situated in District Sindhudurg, which according to her, is purchased from one Ramesh Shridhar Ravrane, by a registered sale deed for a consideration of Rs.Six lakhs.

Giving the history of the transaction, it is the case of the appellant that this property was purchased by the accused in the MPID Special Case, Smt.Jagruti Anant Rane from one Shivangi Shankar Sawant vide registered sale agreement dated 13/8/1999 and she continued to remain in possession of the same till January 2001.

On 3/1/2001, the accused sold the property to Bhagwan Sawant through a registered agreement for sale dated 3/1/2001 for consideration of Rs.3,25,000/- and it is from Bhagawan Sawant, the vendor of the appellant Ramesh Shridhar Ravrane purchased it through a registered agreement dated 26/10/2007.

3 It is the claim of the appellant that she is a bonafide purchaser of the property and continue to be in possession thereof. When she received a notice about the property being put

for auction, she raised an objection before the MPID Court, by giving the details of the registered agreement by which she became the owner of the said property, but unfortunately, since she could not appear before the Court, by order dated 12/12/2019, the learned Judge recorded that there was no appearance on behalf of the objectionist and therefore, the attachment was made absolute.

4 The learned APP Mr.Agarkar would vehemently submit that the property was purchased by the co-accused Jagruti Anant Rane who is absconding and he would invite my attention to the order dated 24/2/2023 when the judgment dated delivered in MPID Case No. 13/2003 under which her husband/accused no.1 Anant Rane stand acquitted and a non bailable warrant is issued against accused no.2 – Anjali @ Jagruti Anant Rane, his wife.

Perusal of the scheme contained in the MPID Act would reveal that where the Government has reason to believe that where any Financial Establishment is acting in a calculated manner detrimental to the interest of depositors with an intention to defraud them and if it is satisfied that such Financial Establishment is not likely to return the deposits or to make the payments assured in order to protect the interest of depositors, it may issue an order and publish the same in Official Gazette, attaching the money or other property believed to have been acquired by establishment either in its own name or in the name

of any other person from out of the deposits collected by the Financial Establishments, or if it transpires that such money or other property is not available for attachment, or not sufficient for repayment of the deposits, in that case, such other property of a Financial Establishment or the Promoter, Director, Partner or Manager may be attached.

5 Pertinent to note that what is permissible to be attached, is the property belonging to the Financial Establishment or standing in the name of any person out of the deposits collected by the Financial Establishment.

In this case, there is no material to establish this necessary ingredient of Section 4 of the MPID Act. Under Section 6 and 7, by virtue of the powers of the Designated Court regarding attachment, the Court shall proceed on the basis of the attachment order u/s.4 i.e. which satisfy the ingredient of the property belonging to the financial attachment or purchased out of the deposits, which have been collected by Financial Establishments.

Though the learned APP would submit that the property is purchased by the accused, in absence of any material to show that this property is purchased out of the deposits and subsequently, when it has transferred hand on three occasion, through registered sale deeds, the question is whether the said property can be said to have been acquired out of the deposits and

the appellant being a bonafide purchaser, whether he should suffer the attachment.

This is a matter to be determined by the Competent Court u/s.7 of the MPID Act, but since no opportunity was afforded to the appellant to stake her claim which she had filed, I deem it appropriate to set aside the impugned order and remand the matter back to the Competent Court to consider the objection of the appellant, raise via her objection dated 1/4/2019.

6 The MPID Court shall consider the said objection dated 1/4/2019 by affording an opportunity of hearing to the appellant and all the concerned contesting the said objection and thereafter pass a fresh order of confirming the attachment, if it deem it necessary.

7 In the aforesaid circumstances, the MPID Court shall pass the necessary orders in an expeditious manner since it is informed that the property is attached in the year 2019.

Appeal stand allowed in the aforesaid terms.

In view of the disposal of the Appeal, IA do not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)