

AGK

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

WRIT PETITION NO.137 OF 2023

Bhanumati Shivilal Shah

... Petitioner

V/s.

Mukesh Shivilal Shah & Ors.

... Respondents

Mr. R.R. Salvi i/by Ms. Suvarna Telgote for the petitioner.

Ms. Kausar Banatwala with Ms. Neuty Thakkar and Ms. Dipali Majethiya i/by Tushar Goradia for respondent nos.1 to 5.

Ms. M.R. Tidke for respondent no.6/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 5, 2023

RC.:

1. The writ petition arises out of judgment and order dated 14th October 2022 passed by the learned Additional Sessions Judge, Vasai in PWDV Appeal No.4 of 2022. The appeal is filed by original complainant against an order dated 5th April 2022 passed by the Judicial Magistrate First Class (Court No.3), Vasai. By the order dated 5th April 2022, the Magistrate directed respondents not to open installed lock on M/s. Ambika Sales Corporation, not to operate bank account thereof bearing Current Account No.320601010011127 of Union Bank of India, Manikpur, Thane. The operation of the order was restricted only till the opponent appear. However, the appellants filed their appeal before the

learned Sessions Court and the Sessions Judge by the impugned order set aside the order observing that M/s. Ambika Sales Corporation is not in existence and, therefore, the order passed by the Magistrate is unacceptable.

2. It needs to be noted that proprietary concern is not a legal entity. Under limited fiction created under Order 30 Rule 1 of the Civil Procedure Code, 1908 such entity has been granted legal status for enforcement of civil rights; however, for the purpose of criminal proceedings or proceedings regulated under Criminal Procedure Code, 1973, a proprietary concern is not the legal entity. Therefore, conceptually the Appellate Court has committed error of law. The order of the Appellate Court, therefore, cannot sustain.

3. However, since the order of the Magistrate was in force till appearance of the opponent and the opponent had appeared, it is necessary for the Magistrate to consider the application of the complainant afresh.

4. Learned Magistrate shall decide application below Exhibit 8 on merits in accordance with law, with the result that impugned order dated 14th October 2022 passed by the learned Additional Sessions Judge, Vasai in PWDV Appeal No.4 of 2022 is quashed and set aside.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)