



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 639/2023

Vitthal Damuji Mehar .Vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U. P. Dable, Advocate for petitioners.
Mrs. M. H. Deshmukh, A.P.P. for respondent.

CORAM : ANIL L. PANSARE, J.
DATE : 29.11.2023

On 07.11.2023, in Criminal Writ Petition Nos.
640/2023 and 641/2023, following order was passed:

“Heard for some time.

2. *The contention is that the investigating agency has not complied the provisions made under Section 8 amongst others of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short ‘MPID Act’) before freezing the accounts of the petitioners in the sense, neither there is any document to show that the assets available for attachment of financial establishment involved herein or the persons referred to in Section 4 of MPID Act were found to be less than the amount or value which the financial establishment under question, namely, Jai Shriram Credit Co-operative Society, Nagpur is required to repay to depositors nor is there order passed by the designated court recording his satisfaction after giving notice to the applicants to show cause why the amount transferred in their account should not be attached, has been placed on record.*

3. *When enquired, learned Additional Public Prosecutor submits that the total amount*

to be repaid to the depositors is Rs. 29 Crores. On further query, she submits that the amount of assets available for attachment of the financial establishment in the case has not yet been assessed. Prima facie, there appears breach of procedure prescribed under Section 8 of the MPID Act.

4. The Officer, who has freezed the accounts of the petitioners shall remain present before the Court to assist the Court for further orders. 5. Learned Additional Public Prosecutor seeks time to take instructions. 6. List after Diwali Holidays.”

2. In compliance of the order, Mr. Anirudh Puri, the Investigating Officer, who froze the account and who is also investigating officer, is present. Learned counsel for the petitioner has invited my attention to the order dated 28.02.2017 passed by Division Bench of this Court in Criminal Appeal No.1056/2015 with Criminal Application No.1376/2015, wherein the Court in context with the raising grounds for non compliance of Section 8 of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act,1999, has held that such ground having not been taken before the Special Judge, the matter will have to be remanded back for consideration afresh.

3. Similar is the situation here. The petitioner has raised a ground of non compliance of Section 8, amongst others, of the MPID Act, which ground was not taken before the Special Judge and, therefore, the learned

Special Judge had no opportunity to record his finding on the same.

4. In the light of the above and considering the judgment of the Division Bench, the matter herein will have to be remanded back for consideration afresh. Hence, following order.

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order dated 24.03.2023 below Exh.-127 passed by learned Additional Sessions Judge – 15, Nagpur in Special Case No.188/2021 is quashed and set aside. The matter is remanded back to the learned Special Judge for consideration afresh, in accordance with law.
- (iii) The parties shall appear before the Special Judge on 11.12.2023.

The petition is disposed of in aforesaid terms.

(Anil L. Pansare, J.)