

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

CRIMINAL REVISION APPLICATION NO. 119 OF 2024

1. Sahebarao Ramdas Shinde

2. Suresh Bhika Chavan

}Applicants

: Versus :

State of Maharashtra

}....Respondent

Mr. Yashodeep Deshmukh with Mr. Vaidesh Pradeep i/b P.R.Patil, *for the Applicants.*

Ms. Rashmi S. Tendulkar, *APP for the Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 1 October 2024.

P.C. :

1) This Revision Application is filed challenging the order dated 24 January 2024 passed by the Additional Sessions Judge, Nashik rejecting the application at Exhibit-8 filed by the Applicants seeking defreezing of their Accounts.

2) I have heard Mr. Deshmukh, the learned counsel appearing for the Revision Applicants and Ms. Tendulkar, the learned APP for the Respondent-State.

3) The case that is sought to be built against the Applicants and Accused No.1-Sudhakar Bhika Badgujar is that Sudhakar Bhika Badgujar was apparently conducting the business under the proprietary name of

'M/s. Badgujar & Co.' since 1992. The said proprietary concern was being awarded contract by Nashik Municipal Corporation for several years. In the year 2007, Accused No.1 wanted to contest election of Nashik Municipal Corporation. However, since he was a Contractor of the Nashik Municipal Corporation, he was not fulfilling the eligibility criteria for contesting the election and accordingly he first converted the business of proprietary concern into partnership by inducting the present Revision Applicants as partners. The Deed of Partnership dated 30 November 2006 was accordingly executed under which the Revision Applicants brought in nominal investment of Rs.20,000/- and took over the entire said business of the earlier proprietary concern. Thus after few days of constitution of the partnership firm, Accused No.1 retired from partnership on 6 December 2006 by executing a Deed of Retirement. Accused No.1 was elected as the Municipal Councillor of Nashik Municipal Corporation and held several vital posts such as Member of Standing Committee, Leader of House, Leader of Opposition etc.

4) It is alleged that during his tenure as Municipal Councillor as well as holding various coveted posts in the Municipal Corporation, several contracts came to be awarded to the partnership firm, M/s. Badgujar & Co., and that Accused No.1 personally participated in the decision making process of award of such contracts. It is alleged that Accused No.1 took active participation in such decision making process and ensured that several contracts were awarded to the partnership firm from which he was shown to have retired. It is further alleged that the said firm earned amount of Rs.1,63,27,082/- from Nashik Municipal corporation in addition to securing other contracts by misusing the position by Accused No.1. It is further alleged that while holding the post of Municipal Councillor, Accused No.1 has been paid amount of Rs.33,69,439/- by the partnership firm during various years from 2006-07 till 2009-10. It is further alleged that amount of Rs.6,36,76,195/- has been withdrawn from the accounts of the Partnership Firm during the years 2006 to 2015 under the heading 'Self'.

It is therefore sought to be inferred that Accused No.1 has utilised the said withdrawn amounts from the Accounts of the Partnership Firm.

5) In the light of the above case that is sought to be built against the the accused, including the Revision Applicants, it appears that the accounts of the partnership firm have been frozen. There is an allegation that the Applicants have purchased properties and other movables by utilising the amounts lying in the accounts and thereafter the application for defreezing of the accounts was opposed by the Respondent-State before the learned Sessions Judge.

6) During the course of hearing of the Revision Application on 23 September 2024, Applicants expressed readiness to provide a Fixed Deposit Receipt for amount of Rs.33.69 lakhs and to maintain the same throughout the currency of trial and prayed for defreezing of all the Accounts. Accordingly, on account of willingness expressed by the Applicants, this Court passed following order :

1) It appears that the Prosecuting Agency has filed affidavit expressing no objection for freezing of accounts of the Applicants subject to the condition of the Applicant securing the amount involved in the crime by maintenance of a fixed deposit receipt representing the said amount during pendency of the Trial. It appears that in the FIR the amount involved is Rs. 33.69 Lakh.

2) Mr. Deshmukh submits that the Revision Applicants are willing to provide a fixed deposit receipt for amount of Rs.33.69 lakh and maintain the deposit throughout the pendency of the trial. He would however express difficulty that on account of freezing of all the accounts, the Applicants would find it difficult to create the fixed deposit of amount of Rs.33.69 lakh. Therefore, without permitting Applicants to utilize the amount lying in the account, the bank account maintained by the Applicants at HDFC Bank, Sharanpur Road, Nashik City (Account No.5020012426980) shall be permitted to be operated for the limited purpose of creating a fixed deposit of amount of Rs. 33.69 Lakh. For that purpose Applicants be permitted to bring in funds in the said account maintained with HDFC Bank. The fixed deposit created with HDFC Bank for Rs.33.69 Lakh shall be produced before the Court on the next date of hearing. It is specifically directed that the Applicants shall not be permitted to utilize any of the amounts lying in the aforesaid account with HDFC Bank except for the purpose of creation of the fixed deposit receipt.

3) List the Criminal Revision Application on 1 October 2024.

7) Today, when the Revision Application is taken up for hearing, Mr. Deshmukh, the learned counsel appearing for the Revision Applicants would submit that the Applicants are unable to arrange for funds for creation of fixed deposit receipts for amount of Rs.33.69 lakhs. Be that as it may. The accusations against the three accused, *prima-facie*, appear to be of serious nature. Accused No.1 faces serious allegation of misusing his position as Municipal Councillor for securing contracts from the Municipal Corporation and then diverting the funds earned from such contracts for his personal use. The FIR alleges that the present Revision Applicants are merely nominal partners in the firm and have been inducted by investing nominal amounts of Rs.20,000/- each. Considering the nature of financial irregularities alleged in the FIR, in my view, the accounts of the Firm cannot be defrozen. Defreezing of accounts of the Firm would enable the Revision Applicants to further siphon off the funds from the accounts. In the event of conviction of the Accused, the properties earned by them by misuse of position by Accused No.1 would become liable for confiscation. In that view of the matter, the amounts lying in the Accounts of the partnership firm are required to be preserved. Such amounts cannot be permitted to be utilised under a specious plea of cause of economic death of the firm.

8) In my view, therefore no case is made out for interfering in the impugned order dated 24 January 2024. Criminal Revision Application is accordingly **dismissed** without any order as to costs. The Trial Court shall however not be influenced by any of the observations made in the order while deciding the case finally. Once the investigations are complete and chargesheet is filed, Applicants would be at liberty to file a fresh application for defreezing of the accounts of the firm.