**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1055 OF 2021**

Shilpa Anil Bhingarde .. Appellant

**Versus**

Amogh Sawant And Anr. .. Respondents

**WITH**

**INTERIM APPLICATION NO. 2022 OF 2024**

**IN**

**CRIMINAL APPEAL NO. 1055 OF 2021**

Lawrence Vastin Jusa .. Applicant/Intervenor

**IN THE MATTER BETWEEN :**

Shilpa Anil Bhingarde .. Appellant

**Versus**

Amogh Sawant And Anr. .. Respondents

...

Mr. Rahul Sarda i/b Mr. Deepak Lad, for the Appellant.

Adv. R. D. Soni a/w Mr. Tushar R. Momaiyah, for the Intervenor/Applicant.

Mr. Hardik Gajra h/f Mr. Sandeep Karnik, for the Respondent No.1.

Ms. M. M. Deshmukh, A.P.P. for the State/Respondent.

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**CORAM : BHARATI DANGRE &**
**MANJUSHA DESHPANDE, JJ.**

**DATED : 12th JULY, 2024**

<u>P.C</u>:-

1. The present Appeal is filed by the Appellant Shilpa Anil Bhingarde, a flat purchaser from the Respondent No.1 in a re-development project and she has assailed the order dated 04.12.2021, passed by the Designated Court under the MPID, rejecting her objection and a prayer that an inquiry may be initiated under Section 7(3) of the MPID Act, and it shall be declared that she has an interest in the property i.e. the amounts lying in the Axis Bank as well as Shamrao Vitthal Co-operative Bank, in the name of the Respondent No.1 and the amount shall be released in her favour, in view of the compliance cum execution of sentence of fine and compensation awarded to her on 10.05.2018.

2. We have heard Mr. Sarda, learned counsel appearing for the Appellant, the learned counsel Mr. Gajra, appearing for the Respondent No.1 as well as the learned counsel for the Intervenor, who have taken out the Application opposing the relief in the Appeal.

The brief sequence of events would lead us to the justiciability of the prayer in the Appeal, and it will allow us to test the legality and sustainability of the impugned order.

The facts of the case would reveal that the Appellant is a purchaser of flat, on the 9th floor in the newly constructed society's building, being referred to as 'the suit flat', somewhere in the year 2009-10. Since there was no progress in the project and the Respondent No.1 did not start with the construction activity, she sought refund. Agreeing to her request, she was assured a refund of the amount invested alongwith the interest and the cheques for the said amount were issued, in furtherance of the Settlement Agreement executed on 06.04.2017.

The cheques issued by the Respondent No.1, however were dishonoured and the Appellant prosecuted him by filing appropriate proceedings, under Section 138 of the Negotiable Instruments Act, and he stood convicted. An Appeal was filed being aggrieved by the said conviction where a direction was issued to deposit 20% of the compensation.

Since there was no compliance of this condition, his bail came to be cancelled and conviction warrant was issued against him.

3. In the continuation of this process, the Appellant approached the Magistrate by filing an application under Section 421 of the Code of Criminal Procedure ("the Cr.P.C."), and it came to the notice of the learned Magistrate that the funds lying in the account of the accused, in fact formed subject matter of the MPID case, registered as C.R. No.212 of 2017.

By an order dated 22.02.2021, the learned Magistrate rejected the Application, by recording that the accounts from which the complainant seek to recover her fine amount, is under attachment. The rejection was supported by the following observation :

> *"3. From the reports of Branch Manager of Axis Bank as well as the investigation officer of crime no. 212/17 it is clear that the said account of Axis Bank, Branch Worli has been*

> *frozen by the investigation officer, because of registration of FIR against the accused under MPID Act, 1999. As the account from which complainant seeking to recover her fine amount is under attachment for an offence committed under the provision of MPID Act. In such circumstances designated court established under the MPID Act has power under Section 7 regarding attachment and defreezing of accounts. In such circumstances this court has no jurisdiction or power to pass any order regarding release of any amount from the account which is already frozen in other case and the matter is subjudice before Hon'ble Designated Court. If this court pass any order that will amount overstepping of jurisdiction and therefore, I proceed to pass the following order."*

4. The Application was therefore rejected, which constrained the Appellant to approach the MPID Court, seeking the reliefs to which we have made a reference above.

The Appeal was strongly contested by the Respondent No.1 by contending that the Appellant had already filed a Civil Suit and she had obtained a favorable order on 03.10.2020 in Notice of Motion No. 1308 of 2020, but she has suppressed this material fact from the Court.

An objection was also raised that her application under Section 7(3) and 5 of the MPID Act, is not tenable in view of the fact that no properties are attached by the

Government of Maharashtra by publication of notification under Section 4 of the MPID Act. Considering the objection of the Appellant and the counter argument on behalf of the accused, the learned Judge noted the background that it is not in dispute that the total sum of Rs.90,31,058/- was lying in the account of the accused Amogh Sawant in two accounts i.e. the savings account in Axis Bank, Worli and the current account in Shamrao Vitthal Co-operative Bank, which are freezzed by the Investigating Officer, as an action taken under the MPID Act. It is in this case the accused had filed an undertaking that he has no objection to transfer the amount of Rs.80,40,923/- in his account in Axis Bank to the account of the Tilak Nagar Police Station for recovery of the alleged misappropriated amount involved in this case.

Recording that the said money in the aforesaid bank accounts is now secured for attachment so as to protect the interest of the depositors of the financial establishment belonging to the accused Amogh Sawant, the MPID Court considered the scope of the application to be filed under Section 7(3) of the Act, which permit an application by a person claiming an interest in the property attached and if such claim is allowed, the attachment is liable to be raised under sub-section (6) thereof.

5. Noting that the Appellant is claiming interest in the money in the account, on the basis of an order of conviction against the accused, but particularly when she is neither an investor/depositor nor a secured creditor, the learned Judge has rightly to come to a conclusion that she is not entitled to claim any interest in the account of the accused person, which

is now attached to secure the interest of the depositors who have invested in the financial establishment.

The learned Judge has rightly left a liberty open to the Appellant to approach the Magistrate for proceeding under Section 421 of the Cr.P.C. who if satisfying the issue warrant for recovery of the amount of the compensation.

6. On reading of the impugned order we do not find any legal infirmity, as though the learned counsel for the Appellant has vehemently asserted before us that she is also an investor, she should then stand in a queue with the investors by making an appropriate application before the MPID Court which, the Court may consider.

In any case for the recovery of the amount of compensation/fine, which is directed to be deposited by the accused i.e. Respondent No.1, pursuant the challenge to his conviction under Section 138 of the Negotiable Instruments Act, there is a remedy available to the Appellant under the Code of Criminal Procedure, 1973, and she is at liberty to avail the said remedy.

7. Finding no legal infirmity in the impugned order, by upholding the same, the Appeal is dismissed.

Since the Interim Application filed by the Interveor is opposing the relief in the Appeal and we have already turned down the relief as prayed for, even the Interim Application is disposed off.

**(MANJUSHA DESHPANDE,J.)** **(BHARATI DANGRE, J.)**

Chaitanya