



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

CRIMINAL APPEAL NO. 547 OF 2024

Sarjerao Naraynarao Kotkar
Age: 73 years, Occu. : Agriculture,
R/o: Kotkar Mala, Kedgaon
Tal. & Dist. Ahmednagar .. Appellant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Kotwali Police Station,
Tq. Dist. Ahmednagar.
2. Shirish Devidas Kulkarni
Age: 58 years, Occu. : Special Auditor,
R/o. 3rd Floor, Ahmednagar District-
Central Cooperative Bank Building,
Station Road Ahmednagar .. Respondents

Mr. Z. H. Farooqui, Advocate h/f Mr. N. V. Gaware Patil, Advocate
for the Appellant.
Smt. Chaitali Choudhari-Kutti, APP for Respondent/State.

**WITH
CRIMINAL APPLICATION NO. 637 OF 2025
IN
CRIMINAL APPEAL NO. 547 OF 2024**

Surekha Anil Dighe
Age : 47 years, Occu. : Household,
R/o. House No. 1569, Near Dighe Brick Kline,
Ambika Nagar, Kedgaon,
Dist. Ahmednagar. .. Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Kotwali Police Station,
Tq. & Dist. Ahmednagar.
2. Shirish Devidas Kulkarni
Age: 58 years, Occu. : Special Auditor,
R/o. 3rd Floor, Ahmednagar District-
Central Cooperative Bank Building,
Station Road Ahmednagar.
3. Sarjerao Narayanrao Kotkar
Age : 73 years, Occu. : Agriculture,
R/o. : Kotkar Mala, Kedgaon
Tal. & dist. Ahmednagar. .. Respondents

Mr. S. N. Gaikwad, Advocate for the Applicant.
Smt. Chaitali Choudhari-Kutti, APP for Respondent/State.

**WITH
CRIMINAL APPEAL NO. 580 OF 2024**

Dnyandev s/o Wamanrao Shinde,
Age : 58 years, Occu. : Businessmen,
R/o: Jagannath Nagar, Kedgaon
Ahmednagar, Tq. & Dist. Ahmednagar .. Appellant

Versus

The State of Maharashtra
Through Police Station Officer,
Kotwali Police Station, Ahmednagar
Tq. & Dist. Ahmednagar. .. Respondent

Mr. D. R.Kale & Mr. A. A. Pawar, Advocates for the Appellant.
Smt. Chaitali Choudhari-Kutti, APP for Respondent/State.

**WITH
CRIMINAL APPLICATION NO. 3343 OF 2024
IN
CRIMINAL APPEAL NO. 547 OF 2024**

1. Yogesh s/o Hiralal Setwal
Age : 48 years, Occu. : Service,
R/o. Nandanwan Nagar, Near Bistabag,
Savedi, Ahmednagar.
 2. Asha w/o Sanjay Bhadane
Age : 58 years, Occu. : Housewife,
R/o. Shahu Nagar, Kedgaon,
Ahmednagar.
 3. Ashok s/o Bhagchand Munot
Age : 54 years, Occu. : Business,
R/o. Balaji Colony, Kedgaon,
Tq. & Dist. Ahmednagar.
 4. Ravi s/o Ramesh Bansode
Age : 49 years, Occu. : Business,
R/o. Mahdavi Nagar, Kedgaon,
Tq. & Dist. Ahmednagar.
- .. Applicants

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai.
 2. Sarjerao s/o Narayanrao Kotkar
Age : 60 years, Occu. : Business,
R/o. : Kedgaon,
Tal. & Dist. Ahmednagar.
- .. Respondents

Mr. N. B. Narwade, Advocate for the Applicants.
Smt. Chaitali Choudhari-Kutti, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 17th July, 2025.

Date on which order pronounced : 26th September, 2025.

FINAL ORDER :-

. The present appeals are filed challenging similar orders and therefore, the appeals are taken up together for final disposal by consent of the parties.

2. By way of criminal appeals the appellants/original accused persons are challenging the legality and validity of impugned order dated 18.05.2024 passed under Section 7 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as “M.P.I.D. Act”) by the learned Special Judge (MPID Act), Ahmednagar in Special Case No. 167/2019. The appellants are the Directors of one Ambika Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit, Kedgaon, Tq. & Dist. Ahmednagar. The informant was appointed as authorized officer to conduct Government Test Audit of the society for a period from 01.04.2016 till 31.03.2018. After conducting audit he found some irregularities and misappropriation of funds of Rs. 2,13,79,947/- (Rs. Two Crore Thirteen Lakhs Seventy Nine Thousand Nine Hundred Forty Seven only). On the basis of his information an offence came to be registered with Kotwali Police Station bearing Crime No.

393/2018 for the offences punishable under sections 406, 409, 420, 467, 468, 471 r/w section 34 of the Indian Penal Code (hereinafter referred to as “I.P.C.”) and under section 3 of the M.P.I.D. Act. The offence came to be registered on 03.09.2018. The appellants are granted protection of anticipatory bail on deposit of an amount of Rs. 5,00,000/- (Rs. Five Lakhs only). Now, the charge-sheet is also filed with the learned Special Court. Pending the trial, the Chief Secretary, Home Department directed to seize the properties of the society as well as the office bearers by order dated 30.12.2021. The said order is passed under section 4(1) and section 5 of the M.P.I.D. Act. For that purpose he appointed learned Sub Divisional Magistrate as a competent authority. After seizure of the properties the prosecution filed an application on 06.05.2024 and prayed to allow to auction the seized properties. The learned Trial Court allowed the said application by impugned order dated 18.05.2024. The appellants are therefore before this Court.

3. It is commonly argued that the present appellants are only the Directors of the society. In Criminal Appeal No. 547/2024 appellant happens to be a daughter of one of the director. It is her

case that she also has a right in the property attached. The order of attachment is passed when she is not an accused or director of the society. The learned Trial Judge has hastily passed an order. No such order could have been passed by the learned Trial Court. There is no question of selling or disbursing of the properties attached of the Directors. There was no sufficient opportunity given to the appellants before passing the order. It is argued that, no proper procedure under section 5 of the M.P.I.D. Act is followed. The order of attachment came to be passed after two years . The notification for attachment was passed on 30.12.2021 whereas, the application under section 7 of the M.P.I.D. Act is filed on 06.05.2024. It was expected of the Court to follow the procedure under section 7. It is necessary for the Court to record satisfaction before passing the order. No such satisfaction is appearing in the order. The properties of the appellants are the ancestral or self acquired properties and not the properties acquired from the funds allegedly from the amount of the offence. The property of the appellants which is attached is not shown in the gazette. The Court without looking to this fact has passed an order. It is mainly argued that it was necessary to apply within 30

days to the Court for auction as per section 5. The impugned order therefore deserves to be quashed and set aside.

4. The learned A.P.P, on the other hand, vehemently argued that, sufficient opportunity was given to the appellants, however, in spite of opportunities they did not even file say to an application filed by the prosecution seeking permission to sell/auction the properties. The amount utilized for purchase of these properties is the amount of deposits kept in the society by the depositors. She submits that the proper procedure is followed. Even personal properties of the Directors can be attached. So far as Criminal Appeal No. 547/2024 is concerned, the learned A.P.P relies upon the judgment in the case of Nimish Satish Deopujari Vs. The State of Maharashtra reported in 2021 (1) ALL MR 501. She further relies upon the judgment in the case of Balasaheb Eknath Ambedkar Vs. The State of Maharashtra and others in Criminal Appeal No. 960/2024 with other connected matters. The learned A.P.P further relied upon affidavit in reply filed by the respondent-authority. She thus prays for rejection of the appeals. The learned A.P.P has also filed on record affidavit in reply.

5. The parties rely upon the following judgments :

(i) Satpal Singh Bachan Singh Nagul & Anr. Vs. State of Maharashtra & Anr. reported in 2019 ALL MR (Cri) 4237.

(ii) State of Jharkhand and others Vs. Ambay Cements and another reported in (2005) 1 SCC 368.

(iii) Sanjay Krushna Katkar Vs. State of Maharashtra and another with other connected matters reported in 2023 SCC OnLine Bom 1834 (Full Bench Judgment).

(iv) Chandrashekhar Vaman Patwardhan Vs. The State of Maharashtra and others in Criminal Appeal No. 1072/2021.

(v) Ramchandra Keshav Adke (Dead) by Lrs. And others Vs. Govind Joti Chavare and others reported in (1973) 1 SCC 559.

6. Thus, it is necessary to see as to whether in the present case the authorities have followed the procedure under sections 5 and 7 of the M.P.I.D. Act.

7. This Court has gone through the impugned orders. The

question before this Court, in view of the submissions and the record is, (i) as to whether the procedure under sections 5 and 7 of the M.P.I.D. Act is properly followed while attaching the properties and passing the orders and (ii) as to whether case is made out to allow the criminal appeals.

8. The learned Trial Judge considered that, the Government notification shows that the Sub Divisional Officer i.e. Sub Divisional Magistrate is a competent authority to attach and sell out the properties of the accused persons. An affidavit filed by the Magistrate is also considered. Further it is observed that, the persons depositing the amount have deposited their hard earned money in the society with a hope to get lucrative returns. He considered the official gazette and granted permission to sell the properties.

9. In the case of Sanjay Krushna Katkar (*supra*), it is held that, when procedure under section 5 of the M.P.I.D. Act is not followed, further proceeding would stand vitiated. This Court finds that, even section 7 of the M.P.I.D. Act is not followed. Sections 5 and 7 of the M.P.I.D. Act reads as under :

5. Appointment of Competent Authority.— (1) The Government may while issuing the order under sub-section (1) of section 4, appoint any of its officers not below the rank of the Deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4, of a Financial Establishment.

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) The Competent Authority shall, within thirty days from the date of the publication of the said order, apply to the Designated Court, accompanied by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as found necessary.

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7. Powers of Designated Court regarding attachment.—

(1) Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorder, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.

(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon all such

persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 (5 of 1908) and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the

Financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

10. The learned Trial Judge has not recorded any satisfaction showing that the properties attached are the properties acquired from the funds of the society from deposits of the persons. It was necessary for the Court to see that proper procedure under Sections 5 and 7 of the M.P.I.D. is followed and it is only thereafter the Court could have granted permission to go for auction. The application was not filed within 30 days as required under section 5 of the Act.

11. So far as judgment in the case of Nimish Satish Deopujari (*supra*) is concerned, there is no dispute that even personal properties of the Directors can be attached, however, it must be shown to the satisfaction of the Court that the said properties are properties acquired from the funds collected from deposits of the depositors. So far as M.P.I.D. Act is concerned, this Court does not find that it is applicable to the present facts. Though the learned A.P.P. submits that the proceeding can be made time bound in

stead of setting aside the order this Court finds that, when valuable right of the present appellants is involved it is necessary to deal with the order instead of directing to dispose of the proceedings within stipulated period.

12. In the case of Balasaheb Eknath Ambedkar (*supra*), the said case is of condonation of delay in moving the application beyond period of 30 days. The said judgment would also not help the respondents in the present case.

13. In the case of State of Jharkhad and others (*supra*), paragraph No. 26 reads as under :

“26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in canceling the concession made in favour of the grantee-the respondent herein.”

14. In the case of Satpal Singh Bachan Singh Nagul (*supra*), in

the said case the property was symbolically attached and stood in the name of Government, however, at the same time it was observed that this was done without following procedure under section 7 of the M.P.I.D. Act. It was observed that section 8 can be invoked only when the properties are notified under section 4. In the present case, no such publication is shown and therefore, there is no question of invoking section 8.

15. In the case of Chandrashekhar Vaman Patwardhan (*supra*), subject matter of the said appeal was not the property included in the notification. It was not open for attachment. Permitting to attach and sell the properties would amount to nullifying several transactions made bonafide. It was further observed that, it was not the case of the Government that the property was transferred to avoid the liability.

16. In the case of Ramchandra Keshav Adke (*supra*), this judgment is relied upon as regards as to whether how to read the provision as to whether it is mandatory or directory.

17. This Court is not satisfied with the affidavit in reply that a case is made out to reject the appeals. Considering above all, this

Court is convinced that, a case is made out to allow the appeals.

18. Therefore, criminal appeals are allowed in terms of prayer clause (B). The impugned orders are set aside.

19. In view of disposal of criminal appeals, criminal applications also stand disposed of.

(KISHORE C. SANT, J.)

PS.B.