IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.262 OF 2024

Uday Kashinath Sankhe & Ors. .... Appellants
versus
The Competent Authority (MPID) & Ors. .... Respondents

WITH
CRIMINAL APPEAL NO.249 OF 2024

Dhruvika Madhusudan Satpalkar .... Appellant
versus
Economic Offences Wing & Ors. .... Respondents

…....

- Mr. S. B. Bhatagunaki a/w Uday Sankhe, Advocate for Appellants in APEAL/262/24.
- Mr. Pankaj D. Jain a/w Ms. Tejashree R. Kamble i/b. P. D. Jain and Co. for Appellant in APEAL/249/24.
- Mr. Pradip D. Gharat, Spl. P. P. a/w Mr. Arfan Sait, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.
DATE : 20th JANUARY, 2025

P.C. :

1. These two Appeals challenge the order dated 31/01/2024 passed by the Designated Judge under MPID in Miscellaneous Application No.496 of 2023 in MPID Case No.1148 of 2022 in EOW C.R.No.107/2016. This order was

passed in the application preferred by the Appellant Dhruvika Satpalkar with two prayers which are as follows:

> "(a) That this Hon'ble Court be pleased to de freeze the Bank Account namely Shree Guru Datta Family Welfare Trust bearing Account No.911010036170702 maintained with Axis Bank, Virar (East) Branch attached by Respondent No.1 (EOW) vide letter dated 21.07.2017 (Annexure G);
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> (b) That this Hon'ble Court be pleased to raised and vacate the order/direction of attachment in respect of immovable property shop known as Shree Sai Sharda (B-Wing) CHS, Bhavani Shankar Road, Dadar (West), Mumbai – 400 028 attached by Respondent Agency vide gazetted notification dated 07.04.2018 (Annexure F)."

2. The Appellant Dhruvika in Criminal Appeal No.249 of 2024 is not an accused in this case, but her mother is. The other Appeal i.e. Criminal Appeal No.252 of 2024 is preferred by one of the investors. The property in question which is the subject matter of the application preferred by the Appellant Dhruvika

before the MPID Court, was purportedly a property of a trust established by her mother. As can be seen from the application preferred by the Appellant, those properties consisted of; first a bank account and second a shop which is situated at Bhavani Shankar Road, Dadar (West). The name of the Trust is Shree Guru Datta Family Welfare Trust. It was established for the benefit of the Appellant Dhruvika in the year 2011. By the impugned order, the learned Judge directed that the bank account of the said Trust maintained with Axis Bank, Virar (E), be de-freezed and the she was permitted to operate the said bank account. By the next clause in the operative part of the impugned order, the learned Judge lifted the attachment in respect of the said shop, which was attached vide the notification dated 07/04/2018. The attachment was vacated in favour of the said Trust in the name of the Appellant Dhruvika as the beneficiary of the said Trust. But it was subject to giving bank guarantee or surety of Rs.1 Crore for removing attachment, which would be in force till final disposal of the case. The Appellant Dhruvika is aggrieved by this particular condition of directing to furnish the bank guarantee of Rs.1 Crore.

3. Learned counsel for the Appellant Dhruvika made the following submissions;

The charge-sheet itself mentions that till 2015, the investors of the concerned financial establishment were getting their returns regularly. The Trust was formed in the year 2011 and therefore, since the period of alleged offence starts after 2015, it does not impact the purchase of property or operation of the bank account prior to that period, which was in the year 2011. He submitted that the shop was also purchased in the year 2011 and therefore it was beyond the scope of the notification by which the property was attached. He submitted that the competent authority could not have attached the property belonging to the Trust. Therefore, the Appellant Dhruvika is put to loss if asked to furnish bank guarantee. He submitted that vide many notifications various properties allegedly involved in the crime were attached, but no efforts were made by the competent authority to pursue the matters further to get the attachment made absolute u/s 7 of the MPID Act. He further submitted that the conduct of the competent authority shows that the attachment of this particular property, which was for the benefit of the Appellant Dhruvika, was not really necessary. He further submitted that, since the said bank account mentioned hereinbefore was not part of the notification attaching properties, there was no necessity in the first place to freeze that bank account.

4. Learned Special P. P. Mr. Gharat appearing for the competent authority and for investigating agency submitted that the flow of money into the bank account of the said Trust was clearly from deposits made by the investors and therefore the investigating agency was well within their rights to freeze that bank account and the competent authority was well within its rights to attach that particular property.

5. Learned counsel appearing for one of the investors submitted that the application to make the attachment absolute was made within 30 days of the notification as provided u/s 5 of the MPID Act. He supported the contentions of Mr. Gharat on the other aspects.

6. We have considered these submissions. The case of the investigating agency against the accused is reflected in column 16 of the charge-sheet filed in respect of C.R. No.570/2016 registered with Borivali Police Station u/s 406, 420, 120-B r/w 34 of the IPC and u/s 3, 4 and 5 of the MPID, which was investigated by the Economic Offences Wing, Unit-8 by registering their separate C.R. No.107/2016. The case in the charge-sheet is mentioned that the FIR was lodged by one Siyaram Dubey and he has alleged that he had invested his money in the different schemes of Maitrey Group Company. He had invested around Rs.25 lakhs. Initially, he got good returns on his investment, but from 2016 he stopped getting returns. The other investors had also invested with Maitreya Group but they lost their money. The FIR was lodged for misappropriation against the accused and loss of investment was to the tune of more than Rs.13 crores. He also gave information regarding 33 investors who had lost more than Rs.8 crores. The investigation was carried out which reflected that the initial investments were made since 1999 in Maitrey Group Company. That company was closed in the year 2009 and another company by the name

Maitreya Plotters & Structures Pvt. Ltd., was started. In 2013, even that company was closed and another two companies by name Maitri Realator and Constructions Pvt. Ltd. and Maitri Suvarnasiddhi Pvt. Ltd. were formed. The investors' amounts were transferred in these two companies and ultimately it was revealed that huge amounts of the investments were defrauded till filing of the charge-sheet. Initially, the names of 1975 investors and their investments of more than Rs.13 crores were revealed. There are further allegations in the charge-sheet that there were 29 lakhs investors and the misappropriation was more than Rs.2,500 crores.

Thus, it can be seen that the fraud is of enormous proportion. The Appellant's mother who is the accused No.1, Varsha Satpalkar, is still absconding.

7. In this background, we have considered the impugned order passed by the learned Judge. The flow of money in the said bank account is reflected in the copy of the bank statement, which is annexed by the Appellant herself. It shows that the opening balance on 20/07/2011 in the account in the name of

the Trust was of Rs.10 lakhs. Thereafter, on the next date i.e. on 21/07/2011, Rs.33 lakhs were deposited. On 23/07/2011, Rs.17 lakhs were deposited. On 29/07/2011 Rs.42 lakhs were deposited. All these amounts were deposited by the Appellant's mother, who is the main accused in this case. Neither in the application nor in any other record it is shown from which source this money was deposited by the mother of the Appellant. The property in question i.e. shop at Dadar was purchased for consideration of Rs.85,75,000/- by way of agreement of sale dated 02/11/2011. Again there is huge gap in the amount of purchase of that shop and the balance maintained in that account during that period. The same shop was attached by the notification dated 07/04/2018, which is the subject matter of the Appellant's application.

8. In this background, the learned Judge in paragraph No.15 has observed thus:

> "However, at this prima facie stage there is no cogent evidence to show that the funds brought by the applicant's mother in trust and for buying property of the trust is not the proceeds of

> the depositors. Hence, the applicant to furnish surety in lieu of bank guarantee of Rs.1,00,00,000/- (Rs. One Crore Only) considering the market rate and ready reckoner rate of the suit property."

9. Having observed this, the learned Judge de-freezed the bank account and also raised the attachment corresponding to the said property i.e. the shop at Dadar, which was at Sr. No.29 in the notification dated 07/04/2018 issued by the competent authority.

10. We found the observation in paragraph No.15 to be directly contradictory to the operative part in the impugned order. Before passing that order, the learned Judge had followed the procedure under the MPID Act and had conducted the summary enquiry u/s 7 before arriving at his conclusion. We found that there is contradiction between his observations in paragraph No.15 and the operative part of the impugned order. Therefore, having taken into account all these factors, we are of the opinion that the matter will have to be remanded back to the MPID Court so that there is a consistent operative part based on the reasons arrived at by the MPID Court. Since we are

remanding back the matter for fresh consideration, both the sides will be at liberty to make their submissions.

11. Hence the following order is passed :

O R D E R

(i) The order dated 31/01/2024 passed in Miscellaneous Application No.496 of 2023 in MPID Case No.1148 of 2022 in EOW C.R.No.107/2016, passed by the Special Judge, under MPID for Greater Bombay, is set aside.

(ii) The learned Judge shall consider the said Miscellaneous Application No.496 of 2023 in MPID Case No.1148 of 2022 afresh by hearing both the sides.

(iii) All the contentions of both the sides are left open to be considered afresh.

(iv) The said application be decided as early as possible.

(S. M. MODAK, J.) **(SARANG V. KOTWAL, J.)**