Judgment

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

CRIMINAL WRIT PETITION NO.925 OF 2024

1. Pravara Medical Trust, Loni, tahsil Rahata, district Ahmednagar, through its Secretary.

2. Dr.Rajendra Eknathrao Vikhe Patil, Secretary Pravara Medical Trust, Lone, tahsil Rahata, district Ahmadnagar. ….. **Petitioners.**

:: **V E R S U S** ::

1. State of Maharashtra, through its Investigating Officer, Economic Offences Wing, Nagpur Branch, Nagpur.

2. M/s.Wasankar Wealth Management Pvt. Ltd. Co., through its Director Prashant Jaideo Wasankar and others, office at 247, Wasankar House Hill Road, Shivaji Nagar, Nagpur.

3. Prashant s/o Jaideo Wasankar, age 44 years, occupation Trading Business/Director of M/s.W.W.M. Pvt.Ltd.Co. and M/s.Wasankar Investment, r/o 42 Shri Natharpan Cosmos Town, Jaitala Road, Nagpur.

4. Smt.Mithila w/o Vinay Wasankar, age 44 years, occupation- Trading Business/ Director of M/s.W.W.M. Pvt.Ltd. Co. and M/s. Wasankar Investment, r/o 42 Shri Natharpan Cosmos Town, Jaitala Road,

Nagpur. At present r/o R-14, Marigold
Apartment, plot No.401, Laxminagar,
Nagpur.

5. Abhijeet s/o Jayant Choudhari, age 31 years,
occupation Trading Business/Director of M/s.
W.W.M. Pvt Ltd. Co and M/s.Wasankar
Investment, r/o 42 Shri Natharpan Cosmos
Town, Jaitala Road, Nagpur. ..... **Respondents**.

==================================

Shri Akshay Naik, Senior Counsel assisted by Shri Rohan Deo, Advocate for Petitioners.
Mrs.S.S.Dhote, Additional Public Prosecutor for Respondent No.1/State.

==================================

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 09/01/2024
PRONOUNCED ON : 20/01/2025

JUDGMENT

1. Heard learned Senior Counsel Shri Akshay Naik for petitioners and learned Additional Public Prosecutor Mrs.S.S.Dhote for the State.

2. **Rule**.

3. By this petition, petitioners challenge order dated 9.1.2024 passed below Exhibit-1 by learned Additional Sessions Judge, Nagpur in Misc.Criminal Application

No.316/2017 arising out of Crime No.156/2014 in Special MPID Case No.4/2014.

4. Petitioner No.1 (the said Trust) is registered under the Maharashtra Public Trusts Act, 1950. It is also a Society registered under the Societies Registration Act, 1860. Petitioner No.2 is Secretary of the said Trust. The said Trust is working in the field of Medical Care and Training Research. The aim and object of the said Trust is to provide community oriented treatment to poor patients. The said Trust has 1270 bedded hospital at village Loni, Ahmadnagar and 80% patients are treated free of cost on charity basis. The said Trust is not a profit making organization and meets its expenses principally through charity received from donors. The said Trust is also registered in the register of Trust/Institution under the Income Tax Act, 1967 and donations made to the said Trust are eligible for benefits of deduction under Section 80G(5)(IV) of the Income Tax Act. The exemption certificate was initially granted from 1.4.2007 to 31.3.2010 and, thereafter, the same

is renewed from time to time. The order dated 18.6.2008 shows that the said Trust is held eligible for benefits of deduction under Section 80G(5)(IV) of the Income Tax Act.

5. The Board of Directors of Wasankar Wealth Management Private Limited, in its meeting dated 14.8.2013, unanimously resolved to donate Rs.1.00 crore to the said Trust for charitable purpose and issued cheque dated 2.9.2013 bearing No.10514. The Board Resolution and the cheque were received by the said Trust on 31.8.2013. The said Trust also issued a certificate of deduction under Section 80G of the Income Tax Act in favour of Wasankar Wealth Management Private Limited vide letter dated 31.8.2013. After a period of more than two years from the date of receipt of donation, the said Trust received summons dated 25.8.2015 under Sections 91 and 160 of the Code of Criminal Procedure directing the said Trust to produce documents relating to the aforesaid donation of Rs.1.00 crore received from Wasankar Wealth Management Private Limited. The Authority also recorded

statement of accountant of the said Trust on 9.9.2015. The Authority again issued summon dated 4.11.2015 under Section 102 of the Code and under Section 8 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (the MPID Act) alleging that donation of Rs.1.00 crore received by the said Trust is part of criminal proceeds and the said Trust was directed to deposit amount of Rs.1.00 crore with designated court under the MPID Act. The said Trust explained that the amount was received as donation and the said amount was already spent towards treatment of patients and Audit Report in that regard was already submitted to the Office of the Charity Commissioner. Despite of the application dated 8.1.2016, again a reminder was issued to the said Trust by the respondent Authority by issuing summons under Section 91 of the Code seeking particulars of the manner in which amount Rs.1.00 crore was spent with relevant documents. The said trust forwarded all relevant documents along with Balance Sheet certified by its

Chartered Accountant. Thereafter, the respondent Authority by letter dated 14.6.2016 directed Central Bank of India to withhold amount Rs.1.00 crore in the bank account of the said Trust in the light of the criminal complaint filed by Shri Vivek Pathak against Wasankar Wealth Management Private Limited and others. The order dated 14.6.2016 had the effect of attachment of the property of the said Trust. The said order was passed without any authority of law.

6. Being aggrieved of order of attachment, the said Trust preferred an application under Section 10 of the MPID Act before learned Additional Sessions Judge, Nagpur and the said application was registered as Misc.Criminal Application No.2243/2016. The said application was rejected by learned Sessions Judge. The application filed by respondents bearing Misc.Criminal Application No.316/2017 under Section 8 of the MPID Act for attachment of property was allowed by learned Sessions Judge by order dated 9.1.2024 and issued attachment warrant to the extent of Rs.1.00 crore against the said Trust.

Hence, the petition.

7. By this petition, the petitioners are challenging legality and validity of order dated 9.1.2024.

8. The petition is strongly opposed by the State on ground that offences under Sections 420, 406, and 506 read with 34 of the Indian Penal Code and read with 3 of the MPID Act vide Crime No.156/2014 were registered against Wasankar Wealth Management Limited, Wasankar Investment, Sarla Securities and its Directors Prashant Wasankar, Bhagyashree Wasankar, and Vinay Wasankar and ors. The amount donated was a crime proceeds and, therefore, it was attached. The order passed by learned Sessions Judge had considered that though the donated amount has been utilized for charitable purpose and donation for noble work, the fact is that hard earned money of number of investors had been misapplied or misappropriated by respondent Nos.2 to 5 and considerable amount thereof came to be transferred to the said Trust and, therefore, no interference is called for.

9. Learned Senior Counsel Shri Akshay Naik for petitioners, submitted that there is no dispute as to the fact that the said Trust is a charitable trust and amount Rs.1.00 crore was transferred towards donation by Resolution dated 14.8.2014 by Wasankar Wealth Management Private Limited. The communication dated 18.6.2008 issued by the Income Tax Department shows that donations made to "Pravara Medical Trust" are eligible for the benefit of deduction under Section 80G(5)(vi) of the Income Tax Act in the hands of the donors subject to the limits and conditions therein. The cheque was issued by Wasankar Wealth Management Private Limited along with referral letter dated 31.8.2013 and, thereafter, on 25.8..2015, first time, after two years of the receipt of the donation, the communication from the Economic Offence Wing, Nagpur City was received by the Secretary of "Pravara Medical Trust" informing that during course of investigation, it revealed that the accused have transferred fraudulent amount of Rs.1.00 crore from their account and it is necessary to

examine these transactions and called upon to attend the office. Accordingly, the Secretary of the said Trust attended the office and rendered his explanation as per letter dated 3.9.2015 stating that "Pravara Medical Trust" is a charitable trust and working in the field of Medical Care and Training and Research. It also runs a rural hospital and aims and objects of the said Trust are to provide medical treatment to poor patients. Again, another notice was also issued to the Secretary of said Trust asking explanation why that amount is not to be attached and asked to deposit the said amount in the designated court. The said notice is also replied by the said Trust on 8.1.2016 contending that the donation was given for charity purpose. The trust has already spent that amount to health care of poor patients and also submitted the list of patients for whom the amount was spent.

10. Learned Senior Counsel for petitioners invited my attention to Section 4 of the MPID Act which authorizes the Government to protect the interest of the depositors by

attaching the money or property believed to have been acquired by such financial establishment either in its own name or in the name of any other persons, from out of the deposits of the depositors. He submitted that the term “any other person” used in the said Section refers to such persons in whose name the financial establishment has acquired the property from out of the deposits. The said Section does not cover each and every person with whom the financial establishment has entered into business or has paid consideration for the services received. The donation of Rs.1.00 crore to the said Trust does not come within the ambit of Section 4 of the MPID Act.

11. Learned Senior Counsel for petitioners, further submitted that Section 8 of the MPID Act provides for attachment of property of *mala fide* transferee. A bear perusal of the said Section would reveal that the property transferred otherwise than in good faith and for consideration shall be attached. The amount transferred is also not covered under

the said Section for the attachment as the said Trust is not a *mala fide* transferee. The designated court has failed to consider that the application under the said Section was not maintainable as the requirement of Sections 4 and 8 of the MPID Act itself are lacking. The designated court has also not recorded satisfaction which is required to be recorded under Section 8 of the MPID Act. He submitted that a thing shall be deemed to be done in good faith when it is in fact done honestly whether it is done negligently or not. The definition of “good faith” provided under Section 52 of the Indian Penal Code states that nothing is said to be done or believed in “good faith” which is done or belief without due care and attention. The donation is a gift, a voluntary transfer without consideration and, therefore, the words “otherwise than in good faith” and “for consideration” are used conjunctively and not disjunctively. The designated court while allowing the application under Section 8 of the MPID Act ought to have recorded satisfaction that donation received by the petitioners was otherwise not in “good faith” and was for consideration. In absence of the said findings, the order deserves to be quashed and set aside.

12. *Per contra*, learned Additional Public Prosecutor Mrs.S.S.Dhote for the State supported the order and submitted that the donation was given with fraudulent intention to deprive investors from getting their invested amounts. It is out of crime proceeds and, therefore, the order passed by learned Sessions Judge is correct and legal one. There is nothing on record to show that the transferee accepted the amount in “good faith”. Moreover, how and in what manner, it is accepted is immaterial. What is material is that it is out of crime proceedings.

13. After hearing both the sides and perusing of the record, it is to be seen, whether the amount which is paid towards the donation can be attached under Section 4 of the MPID Act.

14. As far as factual aspect is concerned, it is not in dispute that the said Trust is registered under the Maharashtra Public Trusts Act, 1950 as well as Societies Registration Act, 1860. There is also no dispute that the said Trust is eligible for benefits of deduction under Section 80G(5)(IV) of the Income Tax Act. The communication to that effect dated 18.6.2008 by the Commissioner of Income Tax-1, Pune substantiates the said contention. It is also not disputed that by passing Resolution on 14.8.2013, Wasankar Wealth Management Limited donated amount Rs.1.00 crore to "Pravara Medical Trust" for charitable purpose and issued cheque on 31.8.2013. Thereafter, after two years, after spending the said amount towards medical expenses of the poor persons, notice was issued to the said Trust to attend the Office of the Economic Offence Wing, Nagpur City which the Secretary of the said Trust complied with. The said Trust has also submitted its explanation that the said amount is already expended by them

towards medical treatment of poor persons along with Audit Report.

15. In the light of these admitted facts, whether the amount already expended for charitable purpose can be attached.

16. The MPID Act was enacted by legislature in the state of Maharashtra. to protect the public from the increasing menace of financial establishments grabbing money from the public in the form of deposits. Section 3 of the MPID Act envisages punishment upon conviction of every person including a promoter, partner, director, manager or employee responsible for the management of or the conduct of the business or affairs of the financial establishment which has fraudulently defaulted in the repayment of deposits on maturity.

17. Section 4 of the MPID Act, contemplates the levy of attachment on properties of a financial establishment on default of return of payment. The said Section provides that if

on a complaint received from the depositors or otherwise, the Government is satisfied that any financial establishment has failed to return the deposit on maturity or demand, or to pay interest or an assured benefit, or has failed to provide a service that was assured against the deposit, or if the Government has reason to believe that any financial establishment is acting in a manner detrimental to the interest of the depositors with the intention to defraud them, it may attach the money or property acquired by the financial establishment out of the deposit. The provision states that if such money or property is not available to be attached, the property of the financial establishment or the promoter, director, partner, manager or member may be attached.

18. Section 5 of the MPID Act, provides for the appointment of a Competent Authority while Section 6 contains a provision for a Designated Court. Section 7 enunciates the powers of the Designated Court regarding attachment. Under Section 7, upon receipt of an application

under Section 5, the Designated Court shall issue a show cause notice to the financial establishment or any person whose property is attached on why the order of attachment should not be made. A notice shall also be issued to all persons who are likely to have an interest in the property,

19. Thus, Section 4 of the MPID Act authorizes the Government to protect the interest of depositors by such financial establishment by attaching money or other believed to have been acquired by such financial establishment either in its own name or in the name of any other person from out of the deposits. The term "any other person" is used to such person in whose name financial establishment has acquired the property out of the deposits. As far as the contents of the Section 4 are concerned, it does not take in its ambit every person with whom financial establishment has entered into business or has paid consideration for services received. The wording used shows that if the Government is satisfied that such financial Establishment is not likely to return the deposits

or make payment of interest or other benefits assured or to provide the service against which the deposit is received, the Government may, in order to protect the interest of the depositors of such financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

20. As far as documents on record are concerned, the same show that the amount of Rs.1.00 crore was transferred to the said Trust for charitable purpose on 14.8.2013 and it is already

expended by the said Trust for treatment of patients in the year 2013 itself. Thus, it sufficiently shows that even if it is accepted that out of the said deposit the money was transferred, admittedly, such money is not available for attachment and in that circumstances Section 4 of the MPID Act states that the Government may attach such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment. The communication issued to the said Trust shows that by issuing the notice under Section 102 of the Code, the said Trust is directed to deposit the amount in the designated court and subsequent to that, the notice was issued to the Central Bank of India on 14.6.2016 to withhold the amount of Rs.1.00 crore in the bank account of the said Trust in view of the offence registered.

21. The communication dated 14.6.2016 had effect of attachment of the property and, therefore, the said Trust filed an application under Section 10 of the MPID Act. Learned

Sessions Judge rejected the application on ground that the Act does not empower the designated court to release the amount when the proceedings of attachment is not under Section 8. Thus, the application was rejected on the ground the attachment is not as per Section 8 of the MPID Act and, therefore, Section 10 cannot be invoked.

22. It is pertinent to note that on 30.1.2017, i.e. one day before decision on the application under Section 10 of the MPID Act, the respondent authority preferred Misc. Criminal Application No.316/2017 under Section 8 of the MPID Act for attachment of the property. The said application was opposed by filing reply. By order dated 9.1.2024, learned Sessions Judge allowed the application for issuing attachment warrant to the extent of Rs.1.00 crore against the the said Trust.

23. Section 8 of the MPID Act, provides of attachment of property of *mala fide* transferee. Perusal of the said Section reveals that the property transferred otherwise than in good faith and for consideration shall be attached. The requirement

under the said Section is twofold i.e. (1) transfer otherwise than in good faith and transfer for consideration. Further requirement is that for issuing attachment warrant, the designated court is required to record satisfaction that the property transferred was “otherwise than in good faith” and “for consideration”. The said Section is reproduced, as under:

> “8. Attachment of property of mala fide transferees.
> (1) Where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Designated Court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred {whether before or after the commencement of this Act) any of the property otherwise than in good faith and for consideration, the Designated Court may, by notice, required any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of section 7, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Designated Court shall order the attachment of so much of the said transferer's property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred."

24. Thus, the wording of Section 8 shows that where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Designated Court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred any of the property otherwise than in good faith and for consideration, the Designated Court may, by notice, required any transferee of such property to appear on a date to be specified in the notice and on its satisfaction issues order of attachment.

25. Thus, satisfaction of the designated court is one of requirements of issuing the attachment order.

26. Whether the transfer of the amount is “in good faith” or otherwise than “in good faith” or for consideration the satisfaction of the court is required.

27. The definition of “good faith” under the General Clauses Act states that a thing shall be deemed to be done in “good faith” when it is in fact done honestly whether it is negligently or not. The definition of “good faith” provides under Section 52 of the Indian Penal Code states that nothing is said to be done or believed in “good faith” which is done or belief without due care and attention. The expression "good faith" in criminal jurisprudence has a definite connotation.

28. The Hon’ble Apex Court in the case of **Suo Motu Contempt Petition (Cri.) No.5/2000, reported in AIR 2001 SC 2374** dealt with the expression “good faith” and in paragraph No.28 held as under:

> “28. The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is defined in Section 52 of the Indian Penal Code thus:
>
> > “Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention.”

The expression “good faith” in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. “Good faith” is defined in Section 52 of the Indian Penal Code. In paragraph No.29 of the said decision, it is further held that, “see the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable care" is explained as "such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act."

29. Thus, the donation is voluntarily transferred without consideration. It is undisputed that the said Trust received the amount of Rs.1.00 crore and nothing is on record to show that it was accepted otherwise than in “good faith”. Thus, while allowing the application under Section 8 of the MPID Act the designated court ought to have recorded satisfaction which is requirement of the said Section. The said Section specially states when the application is filed for attachment of the property of *mala fide*

transferee and the designated court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred any of the property otherwise than in good faith and for consideration, the designated court shall issue an order of attachment. The designated court has not satisfied himself whether transfer of the amount is *bona fide* transfer or not and, therefore, non recording of the said satisfaction and passing of an order of attachment without satisfying itself that transferee is a mala fide transferee directing or issuing the attachment warrant is perverse which is liable to quashed and set aside.

30. In view of that, the order passed by learned Sessions Judge issuing attachment warrant and allowing the application filed under Section 8 of the MPID Act deserves to be quashed and set aside. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Writ Petition is **allowed**.

(2) The order dated 9.1.2024 passed by learned Additional Sessions Judge, Nagpur in Misc.Criminal Application No.316/2017 is hereby quashed and set aside and Misc.Criminal Application No.316/2017 is rejected.

Rule is made absolute in the aforesaid terms.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!