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STATE OF MAHARASHTRA

v.

AVINASH

(Criminal Appeal No. 1580 of 2017)

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SEPTEMBER 07, 2017

[N. V. RAMANA AND DR. D.Y. CHANDRACHUD, JJ.]

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Administration of justice – Abuse of process of law – FIR alleging that the complainant had been fraudulently induced to part with Rs 2.74 crores by way of investment – Pursuant thereto, offences registered under various provisions of IPC and u/s. 3, MPID Act, 1999 – Respondent arrested but granted bail in terms of the undertaking filed by him – His bank accounts attached u/s.102, CrPC – Application by respondent before Division Bench in High Court praying for quashing of FIR and de-freezing his bank accounts, subsequently withdrawn – Application by respondent before Single Judge in High Court for de-freezing his bank accounts – Single Judge directed lifting of the restraint on the operation of bank accounts of the respondent – Plea of appellant-State that as the respondent withdrew his application before the Division Bench, it was an abuse of process to seek and obtain similar relief before Single Judge – Held: On facts, the filing of application before Single Judge for quashing the FIR and for de-freezing the bank accounts constituted a manifest abuse of process – Single Judge was not apprised of the fact that the earlier application seeking virtually the same relief had not been pressed before the Division Bench and had been withdrawn – Order of Single Judge set aside – Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 – ss.3, 4, 5, 7 and 14 – Code of Criminal Procedure, 1973 – ss.102, 482 – Penal Code, 1860 – ss. 406, 420, 506 and 120B.

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Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 – ss. 4, 5, 7 and 14 – Overriding power – Effect of – FIR alleging that respondent fraudulently induced the complainant to part with Rs 2.74 crores by way of an investment – Pursuant thereto, offences registered under various provisions of IPC and u/s. 3, MPID Act, 1999 – Bank accounts of

respondent attached u/s.102, CrPC – Whether bank accounts of the respondent could have been frozen by taking recourse to the provisions of CrPC notwithstanding the special provisions contained in the MPID Act – Held: In terms of the view taken in the present case, it is not necessary to address the said question of law – Code of Criminal Procedure, 1973 – s.102.

Allowing the appeal, the Court

HELD: The High Court was moved in an application under Section 482 of the CrPC, with a specific prayer for de-freezing his bank accounts. This prayer, together with the other reliefs (including that for quashing the FIR) was not pressed and the application was disposed of as withdrawn on 29 June 2016 by the Division Bench. In this background, the filing of another application before the Single Judge on 1 July 2016 for quashing the FIR and for de-freezing the bank accounts constituted a manifest abuse of process. The Single Judge was evidently not apprised of the fact that the earlier application seeking virtually the same relief had not been pressed before the division bench and had been withdrawn. Consequently, there is merit in the submission urged on behalf of the State. The Single Judge ought not to have entertained the application under Section 482 in respect of the same relief which had been given up earlier before the Division Bench of the High Court on 29 June 2016. In terms of the view taken in the present case, it is not necessary to address the question of law adverted to by the High Court. [Paras 12 and 13] [902-F-H; 903-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1580 of 2017.

From the final Judgment and Order dated 18.08.2016 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application (APL) No.459 of 2016.

Ms. Deepa Kulkarni, Nishant Ramakantrao Katneshwarkar, Advs. for the Appellant.

Arjun Vinod Bobde, Ms. Richa Rahlan, Ms. Praneeta Sharma, Amarendra Kumar Singh, Anand Mishra, Advs. for the Respondent.

A The Judgment of the Court was delivered by

DR. D.Y. CHANDRACHUD, J. 1. Leave granted.

2. This appeal arises from a judgment of a Single Judge of the Bombay High Court at its Nagpur Bench dated 18 August 2016 by which a criminal application filed by the respondent has been allowed and a direction for the de-freezing of his bank accounts has been issued.

3. On 9 May 2014, a First Information Report was lodged against the Directors of a company by the name of Wasankar Wealth Management Ltd alleging that the complainant Vivek Pathak had been fraudulently induced to part with an amount of Rs 2.74 crores by way of an investment. On the basis of the information received, offences were registered under Sections 420, 406, 506 and 120 B of the Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('MPID Act'). During the course of investigation, the respondent was arrested, together with other accused. The bank accounts of the respondent were attached in exercise of powers conferred by Section 102 of the Code of Criminal Procedure, 1973.

4. On 11 January 2016, the Special Judge, MPID Act allowed an application for bail submitted by the respondent. The respondent submitted an undertaking before the Special Judge in the following terms:

"Undertaking on behalf of Applicant

1. The applicant seeks release on bail in crime no. 156/2014. The applicant undertakes before this Hon'ble Court that out of an amount of Rs. 14,26,36,300/-. The applicant has already deposited an amount of 2 crores.

2. Out of the remaining amount of 12,26,36,300/- the applicant undertakes to deposit an amount of Rs. 1.5 crores before the 15th day of each month starting from 15.2.2016.

3. The applicant undertakes that the last instalment of 1,76,36,00/- will be paid so as to cover the entire amount of Rs.14,26,36,300/-.

4. The applicant also undertakes to pay the liability of interest till the entire amount is deposited in this court.

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5. The applicant undertakes that if possible and for which every effort will be made, the applicant shall try to find a purchase for the attached properties so that the entire amount is repaid even before early. A

6. The applicant undertakes that in any case if any default of the aforesaid undertaking is committed by the applicant the prosecution shall be at liberty to forth with make an application to this court for cancelling the bail granted to the applicant. B

The applicant undertakes to abide by the present undertaking and also abide all such conditions which this Hon'ble Court impose against the applicant which releasing him on bail." C

Consequently and in terms of the undertaking filed by him, the respondent was released on bail in the following terms :

"Applicant Avinash s/o Rameshji Bhute be released on bail on his executing P.R. Bond for Rs. 1,00,000/- which one solvent surety in the like amount on following conditions : D

1. He shall deposit Rs. 1.2 crores before 15th day of each month staring from 15.2.2016 as per his undertaking Exh.9.
2. He shall deposit accumulated interest at the time of last instalment. E
3. He shall attend Crime Branch, E.O.W., Nagpur on every Wednesday and Thursday for the purpose of interrogation in between 11.00 a.m. to 5.00 p.m. until orders and shall cooperate the investigating officer in investigation. F

Breach of any of the conditions shall entail automatic cancellation of the bail and the applicant shall have to surrender before this Court." G

5. On 9 February 2016, the respondent applied for modification of the conditions of bail imposed by the Special Judge in his order dated 11 January 2016. The respondent prayed that in lieu of the condition requiring him to deposit a sum of Rs 1.5 crores each month, he may be permitted to offer security of immovable property. The modification which he sought was in the following terms : H

A “It is therefore, prayed that this Hon’ble Court be pleased to relax the condition directing the applicant to deposit Rs. 1.5 crores before the 15th day of every month and if this Court finds. It is necessary, in lieu of payment of amount in cash, the applicant be permitted to offer his immovable property i.e. MIDC Leasehold Plot No. D-12, D-13 & D-67 situated at Mouza Sonegaon (Seem), Nagpur
B MIDC, Hingana Road, Nagpur as a Secretary by making the same free from all encumbrances within a period of 90 days by lifting restrictions imposed upon the applicant by this Court vide order dated 9.10.2015, passed in Misc. Criminal application No. 2472/2015.”

C 6. The application for modification of the conditions of bail was numbered as Miscellaneous Criminal Application 350 of 2016. The Special Judge rejected the application for modification by an order dated 1 July 2016.

D 7. The respondent instituted Criminal Application 178 of 2016 before the Nagpur bench of the Bombay High Court under Section 482 of the Code of Criminal Procedure 1973 in which he sought the following reliefs:

- E “a) quash the FIR No. 156/2014, registered by Ambazari Police Station under Sections 420, 409, 406, 506, 120-B of IPC and Section 3 of RBI Act and Section 24 (1) and 27 of SEBI Act pursuant to the report lodged by the non applicant no. 2 in so far as the applicant is concerned and to;
- F b) quash the action of the non applicant no. 1 of freezing the bank accounts of the applicant and defreeze the same and to;
- c) direct the non applicant no. 1 not to take any further coercive steps against the applicant and to stay further proceedings against the applicant.”

G Besides a prayer for quashing the FIR, the respondent specifically sought relief for de-freezing his bank accounts. On 29 June 2016 the Criminal Application was withdrawn on the request of the respondent with liberty reserved him to apply for discharge in the event that the charge-sheet is filed. The order of the Division Bench reads thus:

H “Learned Senior Counsel appearing for the applicant seeks leave to withdraw the petition with liberty to apply for discharge in the event the Charge-sheet is filed against the present applicant.

The Application is disposed of as withdrawn with liberty as prayed for.” A

8. Criminal Application 459 of 2016 was lodged on 1 July 2016, soon after the earlier criminal application was dismissed as withdrawn, in order to assail the order of the Special Judge dated 1 July 2016, to allow the respondent to offer security of his immovable property in lieu of a cash deposit and for de-freezing his bank accounts. The prayers sought before the High Court were as follows : B

“a) quash and set aside the order passed by the Special Court, Nagpur in Misc.Criminal Application No.350/2016 on 1/07/2016, and be pleased to relax the condition imposed by the Special Court, Nagpur directing the applicant to deposit Rs.1.5 crores before the 15th day of every month and to; C

b) In lieu of payment of amount in cash, applicant be permitted to offer his immovable property i.e. MIDC Leasehold Plot No.D-12, D-13 and D-67 situated at Mouza Sonegaon (Seem), Nagpur MIDC, Hingana Road, Nagpur as a Security by making the same free from all encumbrances within a period of Three months by lifting restrictions imposed upon the applicant by the Special Court, Nagpur vide order dated 09.10.2015, passed in MiscCriminal Application No.2472/2015 and to; D E

c) defreeze all the bank accounts of the applicant and he be permitted to operate the same and to ;...”

9. By a judgment dated 18 August 2016 the Single Judge of the Bombay High Court allowed the Criminal Application and directed that the restraint on the operation of the bank accounts of the respondent be lifted. The Single Judge held that the MPID Act stipulates a special procedure in Sections 4,5 and 7, different from the procedure contained in Section 102 of the Cr P C. In view of the overriding effect given to the MPID Act by Section 14, it has been held that the procedure envisaged in Section 102 of the Cr P C cannot be availed of. However, while allowing the application for de-freezing of accounts, liberty has been granted to the Investigating officer to follow the procedure prescribed in law for attaching the properties of the respondent. F G

A 10. The principal submission which has been urged on behalf of
the State is that there was a manifest abuse of the process by the
respondent and that in consequence, he was disentitled to any relief. In
particular, it was urged that the respondent had sought relief specifically
for the de-freezing of accounts in the earlier criminal application. Once
B such a prayer was not pressed when the application was withdrawn
before the Division Bench, it was urged that it was manifestly an abuse
of process to seek and obtain similar relief before a learned Single Judge
of the High Court.

C 11. On the other hand, learned counsel appearing on behalf of the
respondent attempted to support the order passed by the Single Judge
by submitting that the bank accounts could not have been frozen by
taking recourse to the provisions of the CrPC in view of the special
provisions contained in the MPID Act.

D 12. The MPID Act is intended to secure the interests of small
depositors. The respondent initially filed an undertaking before the Special
Judge to set out the manner in which he would secure an amount of
Rs 14,26,36,300/-. Besides an amount of Rs.2 crores which he had
deposited, the respondent undertook to deposit an amount of Rs 1.5 crores
every month commencing from 15 February 2016. He was released on
bail by the Special Judge on 11 January 2016 by requiring him to deposit
E an amount of Rs 1.5 crores each month, commencing from 15 February
2016. The respondent applied for modification of the condition of deposit
in Miscellaneous Criminal Application No 350 of 2016 which was
dismissed on 1 July 2016. The High Court was then moved in an
application (Criminal Application No 178 of 2016) under Section 482 of
the Cr P C, with a specific prayer for de-freezing his bank accounts.
F This prayer, together with the other reliefs (including that for quashing
the FIR) was not pressed and the application was disposed of as
withdrawn on 29 June 2016 by the Division Bench. In this background,
the filing of another application before the learned single Judge on 1 July
2016 for quashing the FIR and for de-freezing the bank accounts
G constituted a manifest abuse of process. The learned Single Judge was
evidently not apprised of the fact that the earlier application seeking
virtually the same relief had not been pressed before the division bench
and had been withdrawn. Consequently, we find merit in the submission
urged on behalf of the State of Maharashtra. The learned single Judge
ought not to have entertained the application under Section 482 in respect
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of the same relief which had been given up earlier before the Division Bench of the High Court on 29 June 2016. A

13. In the view which we have taken, it has not become necessary to address the question of law adverted to by the High Court. We keep the question open.

14. We accordingly allow the appeal and set aside the impugned judgment and order of the learned Single Judge dated 18 August 2016. In consequence, criminal application 459 of 2016 filed by the respondent before the Nagpur bench of the Bombay High Court shall stand dismissed. B

C

Divya Pandey

Appeal allowed.