(2015) 09 BOM CK 0242

In the Bombay High Court

Case No : Criminal Appeal No. 729 of 2015

Tarun Ratnani APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999 — Section 11, 9
Penal Code, 1860 (IPC) — Section 120(b), 420
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 3, 5, 6

Citation : (2015) ALLMR(Cri) 4069

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and A.S. Gadkari, J.

Bench : Division Bench

Advocate : Abad Ponda, Vikrant Negi and Rahul Sinha i/b DSK Legal, for the Appellant; Pradip Gharat, Spl. P.P. and H.J. Dedhia, A.P.P., for the Respondent

Judgement

A.S. Gadkari, J.—The Appellant has preferred the present Appeal under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Rules, 1999 (for short ''MPID Act'') challenging that part of the order, thereby directing the Appellant to furnish bank guarantee and to execute an indemnity bond of Rs. 35 lacs for releasing the vehicle being BMW car bearing registration No. MH-04-ET-1006 by the impugned order dated 25th June, 2015 passed in Misc. Application No. 41 of 2015 in C.R. No. 78 of 2013 registered with EOW Unit-Ill, Mumbai. It is the case of the prosecution that the Applicant is one of the main accused in C.R. No. 316 of 2013 originally registered at Oshiwara Police Station, Mumbai on the complaint of Mr. Gurrpreetsingh Indrajeetsingh Anand and subsequently transferred for investigation to Economic Offences Wing, Mumbai and the same C.R. is renumbered as C.R. No. 78 of 2013 under Section 420, 120(b) of the Indian Penal Code read with Sections 3, 5 and 6 of the Prize Chits and Money Circulation (Banning) Act, 1978 and under the provisions of the MPID Act. During the course of investigation, it was revealed to the investigating agency that the Appellant has purchased the said vehicle being BMW car by using the proceeds from the aforesaid crime and therefore, by invoking the provisions of the MPID Act the Investigating Officer attached the said property of the Appellant. The Appellant thereafter preferred an application before the designated Court under the MPID Act at Mumbai bearing Misc. Application No. 41 of 2015. The Special Judge by its order dated 25th June, 2015 directed to release the said vehicle subject to the Appellant furnishing bank guarantee from any nationalized bank of Rs. 35 lacs and to execute indemnity bond of the same amount within one month from the date of passing of the order failing which the Investigating Officer was directed to sell the said vehicle through E-auction or through any authorized car dealer and to deposit the sale proceeds in the form of FDR drawn from any nationalized bank in the name of Registrar (Criminal), City Civil & Sessions Court, Greater Mumbai for the initial period of five years. The Appellant has impugned that part of the said order herein.

2. Heard Mr. Abad Ponda, learned counsel for the Appellant and Mr. Pradip Gharat, Special P.P. appearing for the Respondent EOW. With the assistance of the learned counsel appearing for the respective parties, perused the entire record produced before us.

3. Mr. Ponda, learned counsel appearing for the Appellant submitted that the Appellant is qualified Chartered Accountant and is also a practicing professional as an accomplished voice over artist who has given his voice to many commercial films, documentaries etc. including hosting the popular radio show on FM radio channel Radio Mirchi. Mr. Ponda submitted that the Appellant is also involved in the business of the company viz. Q-Net group of companies. He further submitted that as a matter of fact some time in the month of May 2013, the Appellant initially purchased Mini Cooper Car which was costing to him Rs. 45 lacs by taking a loan from HDFC of Rs. 30 lacs. He contributed his own share of Rs. 15 lacs as down payment. The Appellant thereafter was paying the EMI at the rate of Rs. 62,200/- towards Mini Cooper Loan agreement. He submitted that in the month of June 2014 he sold the earlier car and purchased a new car being BMW car which was costing him around Rs. 35,32,005/-. He submitted that the Appellant sold his earlier car for Rs. 23 lacs and purchased the new car for Rs. 35 lacs. Mr. Ponda further submitted that the Appellant was operating two separate and distinct accounts for his two vocations viz. voice over artist and Q-Net business. That the Appellant paid a sum of Rs. 4 lacs only from the account of the Q-Net business while purchasing the BMW car and rest of the amount was collected by selling the earlier car and from the receipts in Account No. 1 i.e. the remuneration received from his profession as a voice over artist. Mr. Ponda therefore submitted that at the most it can be said that the Appellant has contributed a sum of Rs. 4 lacs only from his account of Q-Net business, towards purchase of his BMW car and the condition imposed by the learned Trial Court by directing him to furnish a Bank Guarantee of Rs. 35 lacs would be an onerous condition imposed upon him by the Trial Court while releasing the vehicle. He further submitted that though the Trial Court has come to the conclusion that the vehicle has to be released but the condition imposed upon him is onerous and in

his submission has to be waived. He submitted that his client is ready and willing to furnish indemnity bond and also to execute an undertaking to this Court that in case the investigating agency comes to the conclusion that the said car is purchased entirely from the proceeds of the crime, he shall reimburse that amount. Mr. Ponda also submitted a statement of account thereby depicting the transactions effected by the Appellant while purchasing the said two cars in a tabular form.

4. Per contra, the learned Special P.P. submitted that the Appellant is one of the main accused in Rs. 800 Crores scam committed by Q-Net group of companies. He further submitted that the Investigating Officer has filed a detailed affidavit dated 11th August, 2015 thereby placing on record the various facts pertaining to the present crime and submitted that the investigation of the present crime is at a crucial stage. He further submitted that it was revealed during the course of investigation that the Applicant has earned an amount of Rs. 40 lacs during the period since April 2012 to August 2013 by introducing new members to the Multi Level Marketing Scheme in India from Q-Net group of companies. That the said two bank accounts of the Appellant in HDFC Bank have been frozen during the course of investigation and it has been revealed that the Appellant is a beneficiary of huge amount from the companies viz. M/s. Quest Net Enterprises Pvt. Ltd. and M/s. Vihaan Direct Selling (India) Pvt. Ltd. It has further been submitted that the Appellant has purchased the vehicle being BMW car bearing registration No. MH-04-ET-1006 by using the proceeds of crime which came to his part from his role of introducing new members to the scheme. Mr. Gharat further pointed out from the affidavit of the Investigating Officer that the Appellant paid the sum of Rs. 4 lacs and Rs. 31 lacs on 3rd July, 2014 by RTGS to M/s. Mazda Imaging to purchase the said BMW vehicle. The loan of Rs. 30 lacs had been sanctioned and disbursed on 9th July, 2014 to the Appellant and the EMI of the said loan commenced in August 2014. It means that the Appellant paid the consideration amount of Rs. 35 lacs even prior to disbursement of the loan to the Appellant by HDFC Bank. He submitted that all the said transactions of the Appellant according to the investigating agency are dubious and the investigating agency is investigating into the affairs of both the accounts and the various companies to which the Appellant is attached. He therefore submitted that the learned Trial Court has rightly directed the Appellant to submit a Bank Guarantee to the tune of Rs. 35 lacs which is the original cost of the said BMW car and prayed that the present Appeal may be dismissed.

5. It is to be noted here that as per the record the First Information Report in the present crime is registered on 6th August, 2013 at Oshiwara Police Station. It is the allegation of the investigating agency that the Appellant has received an amount of Rs. 40 lacs as the proceeds of the crime during the period from April 2012 to August 2013 by introducing new members to the scheme of Q-Net group of companies. That the Appellant purchased the first vehicle Mini Cooper car in May 2013 and by selling the first vehicle within a period of one year, purchased the present vehicle in the month of July 2014. The said vehicle i.e. BMW car is

the subject matter in the present Appeal. Section 9 of the MPID Act specifies that any Financial Establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Designated Court for permission to give security in lieu of such attachment and where the security offered and given is, in the opinion of the Designated Court, satisfactory and sufficient, it may cancel, the order of attachment or, as the case may be, refrain from passing the order of attachment. In our opinion, the Trial Court after taking into consideration the mandate of the said Section has directed to release the attached vehicle after furnishing the said security. As stated herein above, the purchase price of the BMW vehicle even as per the submission of the Appellant is Rs. 35 lacs. The Trial Court while releasing the said attached vehicle has directed the Appellant to furnish a Bank Guarantee to the tune of Rs. 35 lacs which, in our considered opinion, is just right and proper, as the Trial Court after taking into consideration the various aspects of the matter has exercised its discretion correctly while releasing the said vehicle. The investigation is at a crucial stage and if the vehicle is released without taking proper security from the Appellant, there is every possibility that the property which is alleged to have been purchased by the Appellant from the proceeds of a crime, perhaps will not be available at a subsequent stage for realizing the amount and for its payment to the investors or the persons who are entitled to get the amount after the investigation is completed. We therefore find that the learned Trial Court has exercised its discretion in a proper and legal manner. In our considered opinion, the Trial Court has not committed any mistake either in law or in facts while passing the impugned order dated 25th June, 2015. The Appeal is therefore without any merit and is accordingly dismissed.

