

(2025) 09 BOM CK 0313

In the Bombay High Court, Aurangabad Bench

Case No : Criminal Writ Petition No. 231 Of 2025 With Criminal Application No. 3556 Of 2025

Vijaykumar alias Vijay S/o Sitaram Dandanaik

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 16-09-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 300A
Code of Criminal Procedure, 1973 — Section 91, 102, 145, 146, 451, 459
Indian Penal Code, 1860 — Section 34, 406, 409, 420, 467, 468, 471
Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 — Section 3, 4, 4(1), 4(2)

Citation : (2025) 09 BOM CK 0313

Hon'ble Judges : Vibha Kankanwadi, J; Hiten S. Venegavkar, J

Bench : Division Bench

Advocate : R. S. Deshmukh, M. B. Kolpe, A. M. Phule, V. S. Kadam

Final Decision : Disposed Of

Judgement

Hiten S. Venegavkar, J

1. Rule. Rule made returnable forthwith.
2. Heard with the consent of both the parties for final disposal at the admission stage itself.
3. The petitioner in present writ petition was the chairman of Vasantdada Nagari Sahakari Bank Ltd, Osmanabad. The petitioner challenges an order dated 01.08.2024 passed by the Investigating Officer of the Economic Offence Wing, Dharashiv, whereby his immovable properties were purportedly frozen by issuing a communication to the Sub Registrar of the stamps, Dharashiv. The criminal case against the petitioner is Crime No. 279/2023 registered with Osmanabad City Police Station, Osmanabad for offences punishable under Section 420, 409, 406 read with 34 of Indian Penal Code and section 3 and 4 the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for

short "M.P.I.D Act")

4. The record reveals that this Court by order dated 29.02.2024 in Bail Application No. 271/2024 has released the petitioner on bail imposing certain stringent conditions. The petitioner was directed to deposit a sum of Rs. 2,31,68,472/- and also to furnish security of his landed properties to secure the remaining amount as might be accessed at the time of filing of the charge-sheet. The bail order reads as follows:-

I. The application is allowed.

II. The applicant in connection with Crime No.279 of 2023, registered with Osmanabad City Police Station, District Osmanabad, for the offences punishable under Sections 420, 409, 406 read with 34 of the Indian Penal Code and under Sections 3 and 4 of the M.P.I.D. Act, be released on bail on furnishing personal bond of Rs.1,00,000/- with surety of the like amount on following conditions:-

- a) The applicant shall not pressurize the prosecution witnesses, in any manner.
- b) The applicant shall not tamper with the prosecution evidence, in any manner.
- c) The applicant shall deposit one crore in this Court.
- d) The applicant shall further deposit Rs.1,31,68,472/- in this Court within eight days.
- e) The applicant is directed to furnish undertaking and security to this Court that he is ready to furnish land as security for the remaining amount, whatever that may be calculated and finalized at the time of filing of the charge-sheet.
- f) The applicant shall furnish all these documents for remaining amount within eight days in the Trial Court after the charge-sheet is filed.

The record further reveals that petitioner has fully complied with the conditions imposed in the said bail order and having deposited the amount and furnished the land security valued at about Rs. 7.73 Crores, which was duly accepted by the Sessions Court, Osmanabad by its order dated 29.11.2024 in Special Case No. 115/2024.

5. Despite these judicial orders and the petitioners compliance, the Investigating Officer without issuing any notice or following the procedure under the M.P.I.D Act addressed the letter to Sub Registrar, Dharashiv and directed freezing of the petitioners properties including those unconnected with the alleged offence and some properties purchased prior to 2011. On 28.1.2025, the petitioner first became aware of this action when the Sub Registrar orally informed him and handed over a photo copy of the impugned order issued by the Investigating Officer.

6. The core issue arising for determination are -

- i) Whether the Investigating Officer under the scheme of M.P.I.D Act and the

Code of Criminal Procedure, 1973 (for short "Cr.P.C"), has the power to unilaterally freeze or attach immovable properties by writing a letter to the Sub-Registrar or Land Revenue Authorities ?

ii) Whether the impugned order passed without giving any notice and without following the procedure prescribed by section 4 of the M.P.I.D. Act, violates the principles of natural justice and is liable to be quashed ?

7. Before we determine the aforesaid issues on the basis of the factual matrix, it is important to analyze the statutory frame work under the M.P.I.D. Act. The M.P.I.D Act is a special legislation enacted to protect the interests of depositors of financial establishments. Section 4 of the act provides the mechanism for attachment of properties of financial establishment or persons responsible for the management thereof. Section 4 of the M.P.I.D Act reads as follows:-

4. Attachment of properties on default of return of deposits.

1) Notwithstanding anything contained in any other law for time being in force,-

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed.-

(a) to return the deposit after maturity or on demand by the depositor, or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;

and 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.

(2) On the publication of the order under sub-section (1) , all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent authority appointed by the Government, pending further order from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.

The Section stipulates that the government on receiving a complaint and on being satisfied that such financial establishment is not likely to return the deposits, may move the designated Court seeking attachment of money or property. Thus, reading of Section 4 mandates the power of provisional attachment under Section 4(1) is specifically conferred on the State Government, and not on the Investigating Officer. Further, Section 4(2) requires the State to move to designated Court for confirmation of attachment within 30 days. This statutory design is thus clear that the power of attachment is legislative and judicial, it vests in the State Government and is to be confirmed by the designated Court. The Investigating Officer's role is only confined to investigate and to place material collected during the said investigation before the government or the designated Court.

8. The aforesaid principle was considered by this Court in some what similar facts in the case of Mayur Vasantlal Shetiya vs. State of Maharashtra in Criminal Writ Petition No. 1073 of 2024 by Bombay High Court, Bench at Aurangabad. The facts therein was that notice dated 14.02.2024 under Section 91 of Cr.P.C. were issued by the Police Authorities to the Collector of stamps, Collector Office, Ahmednagar in connection with F.I.R No. 121/2022 registered with Kotwali Police Station, Ahmednagar for the offence punishable under Sections 409, 420, 467, 468, 471 read with Section 34 of I.P.C and Section 3 of M.P.I.D Act. It was held therein that -

4. Perusal of the impugned notice dated 14th February 2024 shows that it has been given under Section 91 of the Code of Criminal Procedure by the investigating officer to the Collector of stamps. If we consider Section 91 of the Code of Criminal Procedure, then it enables the Court or any officer in charge of a police station to issue summons to produce document or other thing. The said power can be exercised when any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings, then the Court may issue a summons or such officer may pass a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. In the impugned notice, after giving names of the accused persons, it is stated that the offence has been registered against them and the Collector of Stamps was directed to give information, as to where the immovable or movable property of those accused persons is in Ahmednagar District and then direction has been given that the said property should be preserved. Further it has been stated that :-

English translation of the same is as under :-

"It is requested to inform the concerned Sub Registrar about the non-purchase and sale of immovable/movable property in the names of the accused in the said crime and also about the non-registration of any transfer of income."

5. As aforesaid, Section 91 of the Code of Criminal Procedure does not empower the investigating officer to issue any directions to a person to do or not to do a particular thing. That Section only enables the production of the document or thing and therefore, the impugned order does not conform to the requirements of Section 91 of the Code of Criminal Procedure. By issuing such directions the investigating officer is transgressing his powers and there is no explanation as to why the provisions of the the M.P.I.D. Act, which empowers the designated Court to take steps, were not adhered to.

Thus, this Court has held that the Investigating Officer cannot assume the statutory powers of the Government or the designated Court by directly issuing orders or directions to the Sub Registrar asking them to attach or freeze the properties by making an endorsement in the land records. In present case Section 4 of the M.P.I.D Act does not provide any such legislative mandate to the Investigating Officer to attach the landed properties of the accused persons involved in M.P.I.D Act by writing a letter to the Sub-Registrars of the Land Revenue.

9. Even, the Cr.P.C re-enforces this limitation. Section 102 empowers the police to seize properties which is alleged or suspected to have been stolen or which creates suspicion of the commission of any offence. This provision has consistently been interpreted to apply only to movable property. In Nevada Properties Pvt. Ltd vs. State of Maharashtra 2019 (20) SCC 119,

29. Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word "seize" would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure.

30. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the

charge complained of and set up in the charge-sheet. The section is a part of the provisions concerning investigation undertaken by the police officer. After the charge-sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the section and the scope and ambit of the power conferred on the criminal court vide Sections 451 to 459 of the Code.

31. The expression "circumstances which create suspicion of the commission of any offence" in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not "any property" is required to be seized. The word "suspicion" is a weaker and broader expression than "reasonable belief" or "satisfaction". The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences.

32. In case and if we allow the police officer to "seize" immovable property on a mere "suspicion of the commission of any offence", it would mean and imply giving a drastic and extreme power to dispossess, etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in civil courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (see *Binod Kumar v. State of Bihar*). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial.

33. As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the criminal court during trial. This, however, would not bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a civil court.

34. In view of the aforesaid discussion, the reference is answered by holding that

the power of a police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property.

A three judge Bench of the Supreme Court held unequivocally that immovable property cannot be attached, sealed or frozen under Section 102 of Cr.P.C by a Police Officer. Any attempt to direct a sub-registrar to freeze " land or to make an endorsement on the 7/12 extract is therefore, without jurisdiction". Even where a special statute like M.P.I.D Act is invoked, Cr.P.C applies only to the extent of not being inconsistent with that special enactment. Since the M.P.I.D Act provides its own procedure for attachment, the Investigating Officer cannot bypass Section 4 and take a resort to provisions from the Cr.P.C.

10. The record also reveals that the impugned order has been passed without giving any notice to the petitioner and record also reveals that the petitioner was never heard or called upon before any such letter was to be issued to the Sub-Registrar of the Land Records. Thus, the action taken without notice or providing opportunity of hearing and furthermore in this regard to the judicial orders granting bail and recording full satisfaction of security for the depositors claims. The impugned order is bad in law. It is trite law that no person can be deprived of property saved by Authority of Law and in conformity with principles of natural justice as guaranteed under Article 300 A of the Constitution of India. The settled principle of law which underscores that even statutory powers of attachment must be exercised with due process and cannot overwrite constitutional protection to property without fair opportunity of being heard.

11. Applying the aforesaid legal principles, it is evident that the Investigating Officer's action of issuing a communication to the Sub Registrar directing freezing of the petitioner's immovable property is ultravires. Section 4 of the M.P.I.D Act contemplates only a provisional attachment by the Government and confirmation by the designated Court. The Action is also contrary to the settled legal position under Section 102 of Cr.P.C. as expounded in Nevada Properties (supra) that immovable property cannot be seized or frozen by Police Officers. The action also ignores the judicial orders of this Court and the Sessions Court which accepted substantial deposits and land security far exceeding the depositors claim rendering the so called freezing wholly unnecessary. Further more, the action is in breach of principles of natural justice having been taken without giving any notice to the present petitioner and thus fails the constitutional mandate under Article 300A and Article 14. In addition to above, certain properties were also found to be acquired prior to the alleged period of offence i.e., from 03.08.2011 till 17.7.2019, this fact also strengthens the petitioners grievance that the action against such properties without notice or hearing is unwarranted and illegal. Attachment of such ancestral or pre-acquisition properties without there been explanation of nexus with the alleged financial default is per se arbitrary and unconstitutional.

12. Accordingly for the reasons recorded above, the petition deserves to be allowed.

ORDER

1. Rule made absolute.

2 The Criminal Writ Petition stands allowed.

3. The impugned order dated 01.08.2024 issued by the Investigating Officers, Economic Offences Wing, Dharashiv purporting to freeze or attach the petitioners immovable properties by communication to the Sub Registrar is quashed and set aside.

4. The respondents are directed to forthwith withdraw any communication, endorsement or entry made in the land records or 7/12 extracts in pursuance of the impugned order and to intimate the concerned Sub Registrar and Talathi accordingly.

5. It is clarified that this order will not preclude the competent Authority or the State Government from taking any action strictly in accordance with the M.P.I.D Act and upon obtaining appropriate orders from the designated Court if such action is otherwise warranted in law.

13. In view of disposal of the Criminal Writ Petition, Criminal Application No. 3556 of 2025 also stands disposed of.