

CNR No. MHGA090010792017
R.C.C. No. 81/2017
State -Vs- Rohit
Order below Exh No.175



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
CHAMORSHI
(Presided Over by Smt Diksha D. Vighne)

Reg. Cri. Case No. 81/2017

(State of Maharashtra
Through Police Station, Chamorshi
- Versus-
Rohit Dhakate & Ors.)

Smt. Pranita Wd/o. Rohit Dhakate
Age:- 44 years, Occ. Household,
R/o. In front of Dr. Borkar Hospital,
Hudkeshwar Nagar, Nagpur

... **APPLICANT**

-VERSUS-

State of Maharashtra,
Through Police Station Chamorshi,
Th. Chamorshi, Dist. Gadchiroli.

... **NON-APPLICANT**

Appearance :-

For the applicant : Learned advocate Shri. P. M. Dhait
For State : Learned Spl. APP Shri. D. V. Donadkar

ORDER BELOW EXH NO. 175

(Passed on 22/11/2023)

This is an application filed by the applicant Pranita Rohit Dhakate i.e. wife of deceased accused no.1 Rohit Dhakate for grant of permission to dispose of immovable property bearing Duplex No. 25 (Type), Modern Society, Bhilgaon, Tq.- Kamthi, Dist.- Nagpur.

2. It is stated in the application that police station Chamorshi has registered an offence vide crime no. 76/2013

punishable under section 420, 409, 201 and 34 of Indian Penal Code against late Rohit Ambadas Dhakate and others on 12-07-2013. Latter, additional offences punishable under section 465, 467, 468, 471 and 477(A) of Indian Penal Code and the matter is pending for trial of accused persons.

3. It is further submitted by applicant during the pendency of this trial her husband late Rohit Dhakate was died on 23-07-2020. Accordingly, the proceeding was abated against him on 06-01-2021 and trial was proceeded against rest two accused persons.

4. It is further stated by applicant that, she has filed application vide Exh. 165 for removing impediment under section 102 of Cr.P.C. for Duplex No. 25 (Type) Modern Society Bhilgaon road, Tq.- Kamthi, Dist.- Nagpur levied by investigation agency. That application was allowed by Court vide order dated 14-03-2022. While alongwith that application a direction was imposed vide sr. no. 4 and directed for not to dispose of the aforesaid property by any means without prior permission of this court and similarly applicant should not make any attempt to dispose of said property by any means without prior permission of this court.

5. It is further submitted by her that the aforesaid property was purchased by her late husband in November 2007 and joint his service of Bank Of Maharashtra Branch-Ghot in the year 2009. Hence, this property cannot be term as a property or assets derived or used in the commission of an offence nor obtained through proceeds of the crime. Hence, this property could not be the subject matter of crime proceeds, in case of conviction of accused at the time

of conclusion of trial of this case.

6. It is further stated by applicant that her son and daughter are taking their respective education. For best education of their choice, the applicant is in utmost necessity to sell the aforesaid property. Another property of late Rohit Dhakate i.e. immovable property bearing Flat No. 401 and 402 of Nilgagan Apartment situated at Hudkeshwar Nagar, Nagpur seized by the investigation agency under section 102 of Cr.P.C. is lying in this court.

7. It is further stated by applicant that the bank authority neither discussed any service benefit amount of her late husband nor started pension amount till today. Hence, applicant is leading her life in the mercy of relatives by lending money from them. Now, her relatives also refusing to help her anymore. Therefore, it is becomes necessary to extend the permission to dispose the aforesaid property for the livelihood of the family of applicant. It is therefore prayed by applicant to grant permission to dispose of Duplex No. 25(Type) Modern Society Bhilgaon, Tq.-Kamthi, Dist.-Nagpur by any means in the interest of justice.

8. Applicant has filed Gaon Namuna-8 of Duplex No. 25(Type) Modern Society Bhilgaon and sale deed dated 20- 05- 2009 in support of her contention.

9. Learned A.P.P. filed his say and opposed this application. According to him, applicant Pranita Dhakate is not a accused in this case. She is claiming to be wife of late accused Rohit Dhakate but no any legal document filed regarding succession certificate. The

investigation officer seized the property Duplex No. 25(Type) Modern Society Bhilgaon. The criminal trial is going on till today and said immovable property seized by I.O. is involved in this offence. The police authority is not barred or prohibited from any documents or paper of title co-related with the immovable property as the same is different from the seizure of immovable property. The court pass an order on 14-03-2022 and imposed a direction vide Sr. No. 4 and directed for not to dispose of the aforesaid property by without prior permission of this court. The case is not dispose of as final and evidence is not completed. The applicant has no right to move this application without showing legal succession certificate for competent court.

10. It is further stated by learned A.P.P. that if the application is allow then applicant will dispose immovable property and destroy the prosecution evidence. Moreover, the future complication for legal action be arise. The late accused Rohit Dhakate misappropriated total Rs. 63,93,621/- from concern bank. The applicant did not challenge the order dated 14-03-2022 before Appellate Court. Applicant has no title or seized any immovable property. Therefore, he has prayed for not to grant permission till the conclusion of final decision of this case because this is a economic offence and huge amount is involved. Hence, he has prayed for rejection of this application.

11. I have perused the record of the case and documents filed by applicant in support of her application. It is alleged by prosecution that accused no.1 deceased Rohit Dhakate while working as Branch Manager of Bank of Maharashtra Branch Ghot from September 2009 to 26-05-2012 had misappropriated amount of Rs. 63,93,621/-.

During investigation of this crime Investigation officer had seized immovable properties of accused no.1. My learned Predecessor had ordered below Exh. 165 on 14-03-2022 to vacate and remove the impediment imposed by police station, Chamorshi on Duplex No. 25(Type) Modern Society, Bhilgaon, Tq.- Kamthi, Dist.- Nagpur. However, while vacating impediment my learned predecessor also imposed a condition at Sr. No. 4 that not to dispose of Duplex No. 25(Type) Modern Society, Bhilgaon, Tq.- Kamthi, Dist.- Nagpur by any means without prior permission of court and similarly applicant should not make any attempt to dispose of aforesaid property at any means without prior permission of this court. The said order was not challenge by applicant before Appellate Court. Instead of it applicant has filed this application for grant of permission to dispose of Duplex No. 25(Type) Modern Society, Bhilgaon, Tq.- Kamthi, Dist.- Nagpur.

12. On perusal of Gaon Namuna -8 filed by applicant it is seen that after the death of accused no.1 the name of applicant and her children were mutated in revenue record of Duplex No. 25(Type) Modern Society, Bhilgaon, Tq.- Kamthi, Dist.- Nagpur. It is also seen from the sale deed filed by applicant that the duplex in question was purchased by accused no.1 on 20-05-2009 because the sale deed was executed and registered on 20-05-2009. The term of service of accused no. 1 at Bank of Maharashtra Branch Ghot is seen as from September 2009 to 26-05-2012. Thus, it is prima facie seen that the alleged duplex was purchased by accused no.1 before joining service at Bank of Maharashtra Branch Ghot. However, the trial of the case is pending. The fate of the case cannot be predicted until conclusion of final judgment. Alleged offence is economic offence and the duplex in question was seized by investigation officer during

investigation as evidence. Moreover, my learned predecessor had imposed condition of not to dispose of alleged duplex because the alleged misappropriated amount is huge and if in case the offence is prove against accused then the properties in their name will be the subject matter of crime proceeds. It is Admitted position that the alleged duplex was purchased by deceased accused no.1 and therefore in case offence is prove then the same property will also be the subject matter of crime proceeds. The trial is still pending and at this stage it cannot be concluded that the alleged duplex was or was not purchased from misappropriated money by deceased accused no.1. Therefore, considering aforesaid reason I find that grant of permission to dispose of Duplex No. 25(Type) Modern Society, Bhilgaon, Tq.- Kamthi, Dist.- Nagpur is not proper and reasonable till conclusion of trial. Hence, I pass following order.

ORDER

Application is rejected.

Date: 22/11/2023

Sd/-
(Diksha D. Vighne)
Judicial Magistrate First Class,
Chamorshi.