REVISED*

ITEM NO.54 COURT NO.13 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 10560/2023

(Arising out of impugned final judgment and order dated 15-02-2023 in CRLA No. 1127/2018 passed by the High Court Of Judicature At Bombay)

RAVINDRA SHAH Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS. Respondent(s)

(IA No.53042/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.53044/2023-PERMISSION TO FILE PETITION)

Date : 17-03-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE KRISHNA MURARI
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Ms. Pooja Thorat, Adv.
Ms. Jayasree Narasimhan, AOR

For Respondent(s) Mr. Anand Dilip Landge, AOR

UPON hearing the counsel the court made the following
O R D E R

Leave to file Special Leave Petition is refused, as a consequence the Special Leave Petition is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(Geeta Ahuja) (Beena Jolly)
Assistant Registrar-cum-PS Court Master

(Signed Order is placed on the file)

***(As per the direction given by this Court vide Order dated 13.04.2023)**

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) No. of 2023)@ Diary No(s). 10560/2023)

with

CRL. M.P. NO. 53044 OF 2023
(Application for permission to file present Special Leave Petition)

RAVINDRRA SHAH **Petitioner(s)**

VERSUS

STATE OF MAHARASHTRA AND ORS. **Respondent(s)**

O R D E R

Claiming to be an investor in the ponzi scheme run by financial establishment C.U. Marketing, a firm, the petitioner has filed the present Special Leave Petition challenging the order dated 15.02.2023 passed by the High Court of Judicature at Bombay, which is between entirely different parties and the present petitioner in this Special Leave Petition has no concern with the same. As such, the petition is accompanied by an application seeking permission to file Special Leave Petition.

2. From the pleadings it appears that the main grievance of the petitioner is that the Bombay High Court ought to have considered the plight of investors who have been waiting for decades to receive the deposits and ought to have directed attachment of properties of all the concerned persons referred to in Section 4 of the Maharashtra Protection of Interest of Depositors Act in Financial Establishments Act, 1999 (hereinafter referred to as **'MPID Act'**).

3. Learned counsel for the petitioner submits that the properties of all the persons concerned with the C.U. Marketing firm ought to have been attached by the State, even if the amount of investor's deposit with the firm was not transferred to many of such persons referred to in Section 4. According to him, the properties of the financial establishment alone was not sufficient to repay the deposits. Hence, such directions ought to have been passed.

4. It is pertinent to note at this stage that the Special Leave Petition does not disclose any details against any of the Directors or other officers of the marketing firm who may have received any amount out of the deposits made by the investor with the financial establishment. In other words, there are no allegations to demonstrate the existence of financial trail to the persons whose property the petitioner seeks to be attached by the State.

5. Learned counsel for the petitioner further submits that the law in this regard stands settled by authoritative pronouncement in the case of **K.K. Baskaran Vs.**

State,[1] which has been subsequently followed in the case of **State of Maharashtra Vs. 63 Moons Technologies Ltd.,**[2]. He further submitted that the judgment of the Bombay High Court in the matter of **Chandraprakash Wadhwani Vs State of Maharashtra,** Criminal Writ Petition No. 849/2018 decided on 29.08.2018 does not lay down the correct law and has taken an erroneous view by restricting the scope of Section 4 for attachment of properties in the hands of only such persons to whom any money out of deposits is actually traced or reasonably suspected. It is also submitted that the impugned order dated 15.02.2023 passed by Bombay High Court is patently erroneous in failing to take into account the fact that properties of all such connected persons, even if no amount was transferred to them out of the deposits received by the financial establishment was liable to be attached and has committed a manifest error of law failing to issue such directions to the state.

6. We have considered the argument.

7. MPID Act, provides for measures of attachment of the properties of the financial establishment as well as mala fide transferees and to bring these properties to sale for realisation of dues payable to the depositors speedily. All mala fide transferees, whether a promoter, director, partner, manager, member or any other person can also be sought to be covered under the scope of MPID Act for attachment and sale for realisation of the dues of investors.

1(2011) 3 SCC 793

2(2022) 9 SCC 457

8. In the case of K.K. Baskaran Vs. State (Supra), this court while considering the validity of the Tamil Nadu Protection of Interests of depositors (in Financial Establishment) Act, 1997 disagreed with the view of the Bombay High Court declaring the MPID Act as unconstitutional. This court further observed that though there are some differences between Tamil Nadu Act and the Maharashtra Act but there are very minor differences, hence, the view being taken will also apply in relation to Maharashtra Act.

9. It may be relevant to reproduce the following observations made by this court:-

> "7. *A perusal of the Statement of Objects as well as the relevant provisions of the Tamil Nadu Act shows that its object was to ameliorate the situation of thousands of depositors from the clutches of financial establishments who had duped the investor public by offering high rates of interest on deposits and committed deliberate fraud in repayment of the principal and interest after maturity of such deposits. The Act provides for measures for attachment of the properties of the financial establishments as well as mala fide transferees and to bring these properties to sale for realisation of the dues payable to the depositors speedily.*
>
> *24. ...By the impugned Act the State not only proposed to attach the properties of such fraudulent establishments and the mala fide transferees, but also provided for the sale of such properties and for distribution of the sale proceeds amongst the innocent depositors. Hence, in out opinion, the doctrine of occupied field or repugnancy, has no application in the present case.*

31. We fail to see how there is any violation of Articles 14,19(1)(g) or 21 of the Constitution. The Act is a salutary measure to remedy a great social evil. A systematic conspiracy was effected by certain fraudulent financial establishments which not only committed fraud on the depositors, but also siphoned off or diverted the depositor's funds mala fide. ....

33. The State being the custodian of the welfare of the citizens as parens patriae cannot be a silent spectator without finding a solution for this malady. The financial swindlers, who are nothing but cheats and charlatans having no social responsibility, but only a lust for easy money by making false promise of attractive returns for the gullible investors, had to be dealt with strongly. The small amounts collected from a substantial number of individual depositors culminated into huge amount of money. These collections were diverted in the name of third parties and finally one day the fraudulent financers closed their financial establishments leaving the innocent depositors in the lurch.

34. The learned counsel for the appellant submitted that the appellant was only a bona fide purchaser of some plots of land from on Arun Kumar and Smt Sulochana, and not from any financial establishment. We are not going into this question as it can be raised in appropriate proceedings. In this case we are only concerned with the constitutional validity of the Tamil Nadu Act.

10. The aforesaid judgment in the case of K.K. Baskaran Vs. State (Supra), has also been followed by this court in 63 Moon Technologies (Supra), while deciding the question whether NSEL is a financial establishment and on the issue of constitutionality of MPID Act after referring to the relevant bye-laws of NSEL, came to the conclusion that NSEL receives "deposits" and defined by

Section 2(c) of the MPID Act and was therefore a “financial establishment” and upheld the constitutional validity of the said act.

11. It may be relevant to extract the following observations from the judgment in the case of 63 Moons Technologies Ltd. (Supra) :-

> *54. The judgment held that the Tamil Nadu Act is constitutionally valid and constitutes a salutary measure which was long over-due to deal with these matters. Significantly, the above extracts from the decision in Bhaskaran (supra) indicate that the differences between the enactment in Tamil Nadu Maharashtra “are minor” and the view of the court on the validity of the former will govern the validity of the latter enactment as well.*
>
> *55. The judgment in Bhaskaran (supra) was followed by another two-Judge Bench of this Court in New Horizons Sugar Mills Limited v. Government of Pondicherry. The case arose from the action of the Government of Pondicherry of attaching the properties acquired by a company. The validity of the Pondicherry Protection of interests of Depositors in Financial Establishments Act 2004 was also in question. A two-Judge Bench of this Court considered whether the pith and substance of the enactment is traceable to the entries in the Union List or the State List of the Seventh Schedule to the Constitution. After adverting to the earlier decision in Bhaskaran (supra) which upheld the Tamil Nadu enactment while disapproving the Full Bench decision of the Bombay High Court on the legislative competence of the State legislature to enact the MPID Act, this Court held :*
>
> *“50. In addition to the above, it has also to be noticed*

that the objects for which the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act were enacted, are identical, namely, to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust.

51. However, coming back to the constitutional conundrum that has been presented on account of the two views expressed, by the Madras High Court and the Bombay High Court, it has to be considered as to which of the two views would be more consistent with the constitutional provisions. The task has been simplified to some extent by the fact that subsequently the decision of the Bombay High Court [(2005) 4 CTC705 (Bom)] declaring the Maharashtra Act to be ultra vires, has been set aside by this Court [Sonal Hemant Joshi v. State of Maharashtra, (2012) 10 SCC 601], [State of Maharashtra v. Vijay C. Pulijal, (2012) 10 SCC 599], so that there is now a parity between the judgments relating to the Maharashtra Act and the Tamil Nadu Act.

59. […] The objects of the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act being the same and/or similar in nature, and since the validity of the Tamil Nadu and Maharashtra Act have been upheld the decision of the Madras High Court in upholding the validity of the Pondicherry Act must be affirmed. We have to keep in mind, the beneficial nature of the three legislations which is to protect the interests of all

depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated."

Following the decision in Bhaskaran (supra), the challenge to the Pondicherry enactment on the ground of legislative competence was repelled.

56. The validity of the MPID Act was specifically dealt with in two decisions of this Court in State of Maharashtra v. Vijay C. Pulijal and Sonal Hemant Joshi v. State of Maharashtra. In both the decisions, this Court upheld the constitutional validity of the MPID Act in view of the earlier decision in Bhaskaran (supra). In Soma Suresh Kumar v. Government of Andhra Pradesh, a two judge Bench of this Court upheld the provisions of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 following the earlier decisioins in Bhaskaran (supra) and New Horizons Sugar Mills Limited (supra).

57. Having discussed the judgments of this Court on the constitutional validity of the state legislations governing financial establishments offering deposit schemes, including the MPID Act, there is no reason for us to reopen the question. This Court has held that the MPID Act is constitutionally valid on the grounds of legislative competence and when tested against the provisions of Part III of the Constitution."

12. The Judgment of the Bombay High Court in the case of

Chandraprakash Wadhwani Vs State of Maharashtra (Supra), also depicts the same ratio of providing an attachment of the properties of financial establishment and all mala fide transferees as held in K.K. Bhaskaran (Supra) and affirmed by 63 Moon Technologies (Supra). It may be relevant to extract the following observations from the judgment in K.K. Bhaskaran:-

> *"6. From the plain reading of sub-section (1) of Section (4) of the Act, it is found that, under this provision, Government is empowered to attach money or property for the purpose of repayment of depositors. Section 4(1) of the MPID Act specifically uses the words "from out of the deposits collected by the Financial Establishment". In the circumstances, it is noted that only if there is flow of funds from out of the deposits collected by the Financial Establishment to its Director, Partner, Manager, Promoter or Member that the same can be attached in whatever form it is available and if it is converted into property, such property can also be subject to attachment, but if such money or property is not available with the Member, Director, Promoter etc. or is insufficient for repayment, any other property of equivalent value owned by them can also be subject to attachment. In the background of Scheme of MPID Act, we, therefore, find no merit in the contention of the petitioner that irrespective of the source of funds, which means, even without having received any money "from out of the deposits collected by the Financial Establishment", in case of insufficiency for the purpose of repayment, every property, even if unconnected, legitimate or ancestral, would be liable to be attached, merely because owner thereof is a Promoter, Director, Partner, Manager or member. If the contention of the petitioner is accepted, then*

the same would lead to absurdity. It is not the legislative intent to attach even those untainted properties, which are neither procured with any money which is arising "from out of the deposits collected by the Financial Establishment", nor represent the equivalent value of any such monies actually received by the Promoter, Director, Partner, Manager or Member." (emphasis supplied by us)

13. It is also to be taken note of that the aforesaid observations made in the case of Chandraprakash Wadhwani Vs State of Maharashtra (Supra), has been affirmed by this court in IA No. 193395/2022 in WP (Civil) No. 995/2019-NSEL Vs Union of India & Ors vide order dated 23.01.2023 by observing as under :-

".....Keeping in mind the principles for such attachment observed in the judgment of the Division Bench of the Nagpur Bench of the High Court of Bombay in Chandraprakash s/o Prakash Wadhwani Vs State of Maharashtra & Anr. [Criminal Writ Petition No. 849/2018 dated 29.08.2018], there can be no doubt that urgent steps need to be taken for ensuring that the funds which have been transferred to third parties are obtained through the necessary process of attachment/liquidation so that the monies are not dissipated away and the Committee appointed by this Court can take action.

We expect the State government to take urgent steps in this behalf in respect of the beneficiaries to whom funds are traced...."

14. The view taken by the Bombay High Court in the case of Chandraprakash

Wadhwani Vs State of Maharashtra (Supra), is in consonance with the view taken by a Nine Judges Constitutional Bench of this court in the case of **Attorney General Vs Amratalal Prajivandas** [3]. In the said case, while considering the constitutional validity of the provisions of SAFEMA, this Court observed as follows:-

> *"44. It is contended by the counsel for the petitioners that extending the provisions of SAFEMA to the relatives, associates and other 'holders' is again a case of overreaching or of over-breadth, as it may be called a case of excessive regulation. .... In our opinion, the said contention is based upon a misconception. SAFEMA is directed towards forfeiture of "illegally acquired properties" of a person falling under clause (a) or clause (b) of Section 2(2). The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or detenu, acquired or kept in their names, do not escape the net of the Act. It is well known fact that persons including in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of convict/detenue whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that*

3(1994) 5 SCC 54

*that property was acquired by the detenu whether in his own name or in the name of his relatives and associates. It is to counteract the several devices that are or may be adopted by persons mentioned in clause (a) and (b) of Section 2(2) that their relatives and associates mentioned in clauses (c) and (d) of the said sub-section are also brought within the purview of the Act. The fact of their holding or possessing the properties of convict/detenu furnishes the link between the convict/detenu and his relatives and associates. Only the properties of the convict/detenu are sought to be forfeited, wherever they are. The idea is to reach his properties in whosoever's name they are kept or by whosoever they are held. The independent properties of relatives and friends, which are not traceable to the convict/detenu, are not sought to be forfeited nor are they within the purview of SAFEMA**. We may proceed to explain what we say. ..... It would thus be clear that the connecting link or the nexus, as it may be called, is the holding of property or assets of the convict/detenu or traceable to such detenu/convict. Section 4 is equally relevant in this context. It declares that "as from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf". All such property is liable to be forfeited. The language of this section is indicative of the ambit of the Act. Clauses (c) and (d) in Section 2(2) and the Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any*

relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. .....In this view of the matter, there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they are in no way connected with the convict/detenu. .... It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under Section 6, and which are held on that date by a relative or an associate of the convict/detenu, are not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish that the said property has not been acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict. We do not think that Parliament ever intended to say that the properties of all the relatives and associates, may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. There ought to be the connecting link between those properties and the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate. In this view of the matter, the apprehension and contention of the petitioners in this behalf must be held to be based upon a mistaken premise. The bringing in of the relatives and associates or of the persons mentioned in clause (e) of Section 2(2) is thus neither discriminatory nor incompetent apart from the protection of Article 31-B." (emphasis supplied by us)

15. Thus, the judgment of the Bombay High Court in Chandraprakash Wadhwani Vs State of Maharashtra cannot said to have taken erroneous view in contradiction to the judgments of this court rendered in the K.K. Baskaran Vs. State (Supra) or 63 Moon Technologies (Supra). On the contrary, the said judgment is in consonance with the principles laid down in the case **Attorney General Vs Amratalal Prajivandas (Supra).**

16. In view of the above facts and discussions, we do not find any force in the contention of the petitioner that while passing the impugned order, the Bombay High Court ought to have issued a direction to the State to attach the properties of all concern persons connected with financial establishment C.U. Marketing.

17. Though, it is a matter of great concern for us also that investors have not received the deposit back even after decades but that cannot constitute a ground to accept the argument that untainted properties of other persons who have not received any amount from or out of deposits made by the investors ought to be attached and liquidated.

18. Apart from the above, even though the petitioner claims to be an investor but that does not entitles him to challenge any interregnum order passed by the High Court in an independent proceeding between two different persons totally unconnected to him.

19. Thus, permission sought by the petitioner seeking leave to file Special Leave Petition is refused, as a consequence the Special Leave Petition is dismissed.

….....J.
(KRISHNA MURARI)

.....J.
(SANJAY KAROL)

NEW DELHI;
17th March, 2023

ITEM NO.54 COURT NO.13 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 10560/2023

(Arising out of impugned final judgment and order dated 15-02-2023 in CRLA No. 1127/2018 passed by the High Court Of Judicature At Bombay)

RAVINDRA SHAH Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS. Respondent(s)

(IA No.53042/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.53044/2023-PERMISSION TO FILE PETITION)

Date : 17-03-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE KRISHNA MURARI
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. Put Mine, Adv.
Ms. Pooja Thorat, Adv.
Ms. Jayasree Narasimhan, AOR

For Respondent(s) Mr. Anand Dilip Landge, AOR

UPON hearing the counsel the court made the following
O R D E R

Leave to file Special Leave Petition is refused, as a consequence the Special Leave Petition is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(Geeta Ahuja) (Beena Jolly)
Assistant Registrar-cum-PS Court Master
(Signed Order is placed on the file)