THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 18th OF DECEMBER, 2023

CRIMINAL APPEAL No. 13140 of 2023

BETWEEN:-

SMT. GIRJA DEVI TIWARI W/O SHRI KODU PRASAD TIWARI,

.....APPELLANT

(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI MANISH K. TIWARI - ADVOCATE AND SHRI SHUBHAM MISHRA - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH ECONOMIC OFFENCES WING (E.O.W.) BHOPAL, UNIT JABLAPUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI MADHUR SHUKLA - ADVOCATE)

This appeal coming on for admission this day, ***Justice Sheel Nagu*** *passed the following:*

ORDER

This criminal appeal has been preferred u/S.11 of the Criminal Law (Amendment) Ordinance, 1944 (for short the '**1944 Ordinance**') assailing Annexure A/1 dated 14.09.2023 which is an order passed by Special Judge (P.C.Act), Jabalpur in MJCR No.1690/2020, by which an application for permission to operate the petrol pump which was attached temporarily u/S.4 of the said Ordinance, has been rejected.

2. Learned senior counsel Shri Manish Datt along with Shri Manish K. Tiwari and Shri Shubham Mishra, learned counsel for appellant and Shri Madhur Shukla, learned counsel for Prosecuting Agency are heard at length.

3. The appellant is one of the accused in Crime No.20/18 registered by Economic Offences Wing, Unit Jabalapur alleging offences punishable u/Ss.13(1) E r/w Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120(B) of IPC.

4. The appellant holds lease hold rights on behalf of Indian Oil Company *qua* retail outlet Shivam filling Station situated at Rajendra Nagar, Satna (M.P.)

4.1 It is not disputed that the husband of appellant is the main accused in the said crime number where the appellant is arrayed as a co-accused.

4.2 The said retail outlet has been temporarily attached by ad interim attachment order passed on 17.06.2020.

4.3 The appellant moved an application u/S.8 seeking permission of Trial Court to operate the said retail outlet. By the impugned order dated 14.09.2023, said prayer has been rejected.

5. After having gone through the record and contents of the Criminal Law (Amendment) Ordinance, 1944, it appears that when an order of interim attachment is made awaiting the same to become absolute, the person who is adversely affected by the ad interim attachment can make an application u/S.8 furnishing security to the District Judge concerned, who, in turn, is empowered to assess the sufficiency of the said security and thereafter pass appropriate order regarding ad-interim custody subject to the final attachment.

5.1 A bare perusal of the application preferred by appellant dated 19.08.2020 (Annexure-A/7) reveals that there was no offer made by appellant

of furnishing security and thus the said application was not only incomplete but also not in terms of the provisions of Section 8.

5.2 The District Judge ought to have either returned the application or dismissed the same as not maintainable, but instead impugned order was passed rejecting the request for permission to run the retail outlet.

5.3 It is not disputed at the Bar by learned counsel for rival parties that the interim attachment order passed on 17.06.2020 has not yet been made absolute and, therefore, appellant can very well invoke section 8.

5.4 Learned counsel for Prosecuting Agency however referring to an earlier decision taken by the coordinate Bench on 03.03.2022 in Criminal Appeal No.4796/2020 (Girja Devi Vs. The State of M.P.) submits that similar prayer was considered and rejected by co-ordinate Bench of this Court and, therefore, this appeal is not maintainable.

6 . We have perused the order of the Co-ordinate Bench of this Court passed on 03.03.2022 in Criminal Appeal No.4796/2020 where a similar prayer for permitting appellant to operate the retail outlet was rejected on the ground that final order of attachment has not yet been passed and, therefore, the said prayer is premature.

6.1 The 1944 Ordinance merely confers right upon person whose property is subjected to ad interim attachment to file an application u/S.8 for release of his property subject to furnishing security to the satisfaction of District Judge. Thus, the finding in the order of the Co-ordinate Bench dated 03.03.2022 that the prayer was pre-mature and could not be considered unless the final order of attachment is passed, is rendered *per incuriam* the provision of Criminal Law (Amendment) Ordinance, 1947 and therefore stands denuded of its precedential characteristic.

6.2 In view of above discussion and the fact that the application by appellant itself was not in the right format and also there was no prayer for furnishing of security before the District Judge, this Court deems it appropriate to dispose of this appeal with liberty to appellant to file appropriate application u/S.8 along with furnishing adequate security. If the District Judge/Special Judge finds the security to be satisfactory and sufficient, then the Court shall pass appropriate order as expeditiously as possible, without being prejudiced by order dated 14.09.2023.

7. With the aforesaid liberty and direction, criminal appeal stands **disposed of.**

(SHEEL NAGU)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

DV