

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (STATE) NO. 16 OF 2024

The State of Maharashtra

...Applicant

Versus

1. Rajveer Navratna Sharma

2. Karishma Manoj Punamiya

...Respondents

Ms. Sharmila Kaushik, APP for Applicant/State.

Mr. Vishalkumar Kothari for Respondent Nos. 1 and 2

CORAM : M.M. SATHAYE, J.

DATE : 08th OCTOBER, 2026

PC. :

1. Heard learned Counsel for the parties. Perused the record produced before the Court.

2. By this application, the State is seeking leave to file appeal challenging the judgment and order of acquittal dated 30.08.2023 passed by Special Judge (MPID) and Additional Sessions Judge, Thane in MPID Special Case No. 3 of 2015. By the said order, Respondents/Accused Nos. 1 and 2 are acquitted of the offence punishable under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ('MPID' for short) as well as of offences punishable under Sections 420 and 406 read with Section 109 of Indian Penal Code, 1860 ('IPC' for short).

3. The case of the prosecution in short is as under. That the informant came to know that accused No. 2 has started 'Bhishi' styled as 'Gold Kitty Party' and if amount of Rs.1,000/- is deposited every month for 36 months, then after 3 years the investor would get principal amount plus interest of Rs.5,000/-. That informant visited the office of accused No. 2 where accused No. 2 explained the scheme and informed that there will be 500 members. That accused No. 2 got the scheme form filled from the informant and

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booking No. 205 was allotted and the informant became member of the 'Bhishi'. That accused No. 2 told that her employee - accused No. 1 would visit the house of informant every month to collect Rs.1,000/-. That accordingly accused No. 1 visited the house of informant to collect money every month and issued receipts. That accused No. 2 kept parties for members every month and 'Bhishi' ended in March 2014. The amount due as promised was demanded; however, informant received evasive replies. Apart from informant, other members were also cheated by accused No. 2. On 10.02.2015, the informant and 50 to 60 other members of the kitty party, who had not received the amount, visited the office of accused No. 2, where they came to know that many members have not received their amount. Apprehending that accused No. 2 would abscond, the informant lodged FIR on 10.02.2015.

4. Initially offence under Section 420 and 406 read with 34 of IPC was registered. During investigation, offence under MPID Act was added. The Investigating Officer visited the office of accused No. 2, seized various files, receipt books, rubber stamps, under panchnama. Statements of investors were recorded. According to prosecution, accused No. 2 had defrauded various investors to the tune of Rs.39,74,000/-. On the completion of investigation, charge sheet was filed. Both the accused were arrested.

5. The accused pleaded not guilty and claimed to be tried. Their defence is of denial and false implication.

6. The prosecution examined as many as 15 witnesses, out of which 14 witnesses are investors and one witness is the investigating officer.

7. In such circumstances, the learned Special Judge has acquitted the Respondents/accused.

8. Learned APP appearing for the Applicant/State contended that the offences were proved in view of sufficiently corroborating evidence produced by the prosecution in the form of testimonies of investors and investigating officer. She submitted that both the offences under MPID Act as well as IPC ought to have been held as proved.

9. Learned counsel for the Respondents/accused supported the impugned order contending *inter alia* that neither offences under MPID, nor under IPC are made out. He submitted that the accused was merely running 'a kitty party' for which various members had paid amounts and accused No. 2 has organized periodic parties in which lucky draw and prizes used to be distributed, refreshments used to be served and gifts used to be given. He submitted that there is no documentary evidence to suggest that there is any promise of refund or return on investment or multifold increase of investment. He submitted that to attract offence under MPID Act, there has to be a financial establishment, which is absent in the present case. He submitted that accused No. 1 was merely employed by accused No. 2 and there is nothing to indicate that he has received any monetary benefits. He submitted that under Section 2(c)(vii) of MPID Act, any amount received by way of subscription in respect of chit (as defined under Chit Funds Act, 1982) is excluded from the definition of deposit and therefore, the charges under MPID cannot be said to be proved.

10. I have considered the rival submissions and perused the impugned order as well as the copies of oral evidence produced on record.

11. So far as offence under MPID Act is concerned, the learned Special Judge has rightly held that there is no financial establishment proved by the prosecution. It is rightly held that no name of any financial establishment is revealed. Since the Respondents/accused are not charged under the Chit Funds Act, 1982, the amount paid cannot be considered as subscription.

12. Learned Special Judge has also rightly considered that accused No. 1 was merely working for accused No. 2 and he is not proved to be beneficiary so far as the amount collected from the members is concerned.

13. On going through the statements of various witnesses who are investors, it is seen that some of the witnesses have stated that they have either received full amount or partial amount from the accused No. 2. No doubt many witnesses have also stated that there was no refund from accused No.2.

14. Learned APP has shown some of the receipts issued on behalf of Gold Kitty Party to the investors. There is no promise of multifold returns made against receipt of the amount.

15. In that view of the matter, acquittal of both the accused from charges under the MPID Act does not require re-consideration and case is not made out for grant of leave, so far as offence under MPID Act is concerned.

16. However, so far as offence punishable under Sections 420 read with 406 and 109 of IPC are concerned, it is material to note that the receipt issued on behalf of 'Gold Kitty Party' shows that the amount is received against 'booking gold' for a particular month and the receipt itself asserts tagline 'saving and lot of fun'. In that view of the matter, it is difficult to accept, at this stage, that there is no promise of refund or returns. The case of Respondent/accused No. 2 that the kitty parties used to be organized regularly with distribution of gifts and refreshments and therefore for managing such events for kitty party, it was necessary to maintain record of members and for the same, the members were registered and receipts were issued every month, requires further scrutiny as to whether accused No. 2 has cheated the investors.

17. No doubt the complainant PW-1 has admitted in cross-examination that she has received amount in cash and has purchased goods worth certain other amount and she does not have any complaint against the accused as on the date of deposition. However, 12 out of 14 investor witnesses, examined by the prosecution, have stated that the amount was not refunded / returned. Therefore, to the extent of offence under IPC, reconsideration is necessary for accused No. 2.

18. Since, it is rightly found by the learned Special Judge that accused No. 1 was only employee of accused No. 2 and there is nothing on record to indicate any monetary benefits received by him, the acquittal of accused No. 1 from the offences punishable under IPC, also does not require any interference.

19. In the result, application is partly allowed. The State is permitted to file appeal against accused No. 2 for IPC offences only. Request for leave to file appeal against accused no. 1 and offences against both under MPID Act, is refused.

20. The Appeal is admitted. Learned Counsel for the Respondents waives service. Action under Section 390 of Code of Criminal Procedure, 1973/Section 431 of Bharatiya Nagarik Suraksha Sanhita, 2023, be initiated and necessary steps be taken in the concerned Trial Court.

21. It is clarified that observations in this order are limited to the purpose of deciding leave-application and the appeal shall be decided on its own merits without being influenced by this order.

(M.M. SATHAYE, J.)