IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 262 of 2016

M/s. Popular Stock and Share Services
Ltd.
14, Haji E.P. Trust Building,
1st floor, Gokhale Road North, Dadar,
Mumbai 400 028. ... Appellant

V/s.

1. The State of Maharashtra

2. The Deputy Collector-cum- Competent
Authority, Under M.P.I.D. Act
Mumbai.

3. The Security and Exchange Board of
India, through its Chairman
Bandra (E).

4. Popular Welfare Association
Andheri (E), Mumbai-93. ... Respondents

Mr. Samir A. Vaidya for the appellant.

Mr. J.P. Yagnik, APP for the State.
Mr. Venkatesh Dhond, Senior Counsel a/w. Mr. Mihir Mody a/w. Mr. Saurabh Bachhawat, advocates i/b. K. Ashar & co. for SEBI.
Mr. L.C. Chogle, advocate for intervenor.

CORAM : ***NARESH H. PATIL AND***
PRAKASH D. NAIK, JJ.

RESERVED ON: 01st September, 2016.
PRONOUNCED ON: 08th September, 2016.

ORDER (PER NARESH H. PATIL, J)

The appellant challenges order dated 28th July, 2015 passed by the Designated Court under the M.P.I.D. Act at Bombay City Civil and Sessions Court, Mumbai in Misc. Application No. 105/2012 in Special Case No. 5 of 2001.

2. The Chairman of the appellant Subhash S. Karkhanis is accused no.1 in Sessions Case. The appellant prayed for following reliefs which is quoted in the order itself.

> "That this Hon'ble Court be pleased to direct the respondent to return the complaint/claims of the clients of Portfolio Management Scheme of the applicant company as the said instruments are not covered under the definition of "deposit" in MPID Act."

3. Briefly stated the facts are as under:

M/s. Popular Group of companies is registered under the Companies Act, 1956. The company was also registered under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act, 1992 for short) and SEBI Portfolio Management Regulation, 1993. It is the appellant's case that company was carrying activity of

Portfolio Management Scheme (hereinafter referred to as PMS for short). The company accepted deposits in PMS. Around 1400 claims are pending before the Designated Court, MPID and more than 800 depositors pertaining to claims of PMS are pressing for their money which is around Rs. 10 Crores.

4. Investors' case is that they invested their money in PMS approved by SEBI. The prosecution alleges that appellants' financial institution committed fraud and defaulted payment of amount to its depositors.

5. Learned Counsel appearing for the appellant submitted that the PMS was covered under the guidelines and regulations made by SEBI, hence, the amount collected under PMS was not covered under the definition of “deposit” as prescribed under Section 2(c) of the Maharashtra Protection of Interest of Depositors (in financial establishments) Rules, 1999 (hereinafter referred to as MPID Act, 1999 for short). It is submitted that the said scheme is not covered under the MPID Act and, therefore, even the appellant's prosecution and further proceeding was contrary to law. The learned Counsel referred to provisions of Section 2(c) of the MPID Act which defines deposits. A reference was made to the provisions of SEBI Act, 1992 and Regulations

made therein. Learned Counsel submitted that the prosecution erred in failing to consider the terms and conditions prescribed by the appellant to its depositors while accepting their investments. The terms and conditions do not refer to any monthly regular payment or return of fixed amount on deposits to its investors. Due to the prosecution, the appellant is suffering. The appellant company's operations were abruptly terminated and stalled. The Counsel submitted that the prosecution launched on the steps initiated under MPID Act are contrary to the mandate of Article 19(1)(g) and Article 21 of the Constitution of India.

6. Learned APP appearing for respondents 1 and 2 defended the impugned order. It was submitted that since last so many years the depositors/investors are fighting for their money which was entrusted with the appellants. Several petitions were filed earlier by the appellants raising identical issues and other issues due to which impediments were created in resolving the issue. Even the present plea raised before this Court is second or third attempt made by the appellants before this Court after failing to convince this Court in the earlier proceedings.

7. The Counsel appearing for the intervenor/investors submitted that the petition deserves dismissal as in the earlier rounds, the appellant

failed to convince this Court. Counsel placed on record reply and certain documents to show that the appellant accepted huge sums of money from hundreds of investors with a promise that they would be getting regular returns on their deposits. Learned Counsel referred to the order passed by the learned Single Judge of this Court (Coram: Smt. Ranjana Desai, J) on 6th May, 2005. It was observed that no case was made out for interfering in the matter. The offence committed during the period 1992 to 2000 is still awaiting judicial scrutiny at the hands of the Special Judge. It is submitted that the charge against the accused is already framed on 25th June, 2014.

8. Learned Senior Counsel Shri Dond appearing for SEBI submitted that there is no embargo in law that in case appellant was registered under the SEBI Act and Regulation, they shall not be prosecuted and proceeded against under the MPID Act. The argument advanced by the appellant according to Counsel is fallacious in respect of the interpretation put up on the statutory provisions of two enactments.

9. We have perused the record placed before us, considered the provisions of SEBI Act and MPID Act. In the facts and the record placed before us, prima-facie we are not convinced to hold that the amount

received from hundreds of depositors by the appellant was under a PMC scheme and there was no promise to return monthly assured sum to the depositors. The trial Court observed that the deposit was not received to raise capital of financial establishment but amount was received from the investors to trade.

10. It is apparent from the face of record that appellant's financial establishment was accepting the deposits with promise to pay a monthly assured fixed return under the garb of investment under PMS scheme. We do not find that the impugned order passed by Special Judge needs to be interfered with by this Court.

11. The learned Single Judge of this Court in the year 2005 in a proceedings initiated by the appellant Subhash Sadashiv Karkhanis (one of the accused herein) and others being Civil Application No. 1056/2005 aongwith Civil Application No. 1057/2005, has observed in paragraph-13 as under:

> " It is not possible for me to accept this submission. The so-called portfolio management scheme certificates indicate that the invested money carries fixed rate of interest. Some of the copies of such certificates have been shown to me. The rates of interest are mentioned over leaf.

> In my prima-facie opinion, therefore, they would fall within the definition of deposit under the MPID Act. Prima-facie it is clear that the appellants have accepted deposits. Besides, my attention is drawn to the order dated 25/10/2001 in Misc. Application No. 157/2001 where the Special Court has dealt with this issue and has stated that the appellants have not produced any agreement which they have entered into with their clients. The Special Court has further observed that even the intention to enter into such contracts have been shown to have fructified into contracts of portfolio management scheme. Prima-facie, this view appears to be the correct view and I concur with it."

12. Taking into consideration the record, the pleas raised, replies filed and particularly the object and purpose behind the enactment of MPID, no interference is warranted. The charge is already framed against the accused persons.

13. We direct the trial Court to expeditiously decide the case on its own merits. Parties shall co-operate with the trial Court. There is no merit in the petition. Petition is dismissed.

(PRAKASH D. NAIK, J.) **(NARESH H. PATIL, J.)**

L.S. Panjwani, P.S.