IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 214 OF 2017

Devendar Gurusharan Khurana,

Age : 58 Years, Occu. Service,

R/o Osmanpura, Aurangabad. ...Applicant.

Versus

State of Maharashtra

Through Police Inspector,

Kranti Chowk Police Station,

Aurangabad. ...Respondent.

Mr. Vishal A. Bagdiya, Advocate for applicant.
Mr. D. R. Kale, Addl. Public Prosecutor, for respondent / State.

WITH

CRIMINAL REVISION APPLICATION NO. 200 OF 2017

Balkrishan S/o Jethuram Sharma,

Age : 68 Years, Occu. : Retd.

R/o Jalannagar Aurangabad. ...Applicant.

Versus

State of Maharashtra ...Respondent.

Mr. Ladda Somnath G. and S. J. Rahate, Advocates for applicant.
Mr. D. R. Kale, Addl. Public Prosecutor, for respondent / State.

WITH

CRIMINAL REVISION APPLICATION NO. 205 OF 2017

Jaker s/o Hamid Khan,
Age : 48 Years, Occu. Business,
R/o Beed by-pass Road,
Aurangabad. ...Applicant.

Versus

State of Maharashtra ...Respondent.

Mr. Shaikh L. S. and Bide D. A., Advocates for applicant.
Mr. D. R. Kale, Addl. Public Prosecutor, for respondent / State.

CORAM : SMT.VIBHA KANKANWADI. J.
RESERVED ON : 18-01-2018.
PRONOUNCED ON : 23-04-2018.

JUDGMENT : [Per Smt. Vibha Kankanwadi, J]

(1) All these applications have been filed invoking the powers of this Court under Section 401 of Criminal Procedure Code, in order to challenge the order dated 26.7.2017, 17.8.2017 and 17.8.2017, respectively, of rejecting the discharge application filed by them in MPID Case No. 1/2007 passed by the learned Special Judge

under MPID Act, Aurangabad. Applicants are the accused No. 7, 6 and 5, respectively.

(2) The prosecution had come with a case that the company by name Vatan Textiles Limited had collected the amount of Rs. 25,55,000/- from 25 depositors from 1997 to 2001 in the form of fixed deposit and failed to re-pay the respective amounts to the depositors. It is stated that the accused persons have committed offence punishable under Sections 467, 468, 420, 406 read with 34 of Indian Penal Code and under Section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 (Hereinafter referred to as the MPID Act).

(3) After registration of the offence, the investigation has been carried out and charge-sheet has been filed against the present revision applicants. The case is registered as MPID Special Case No. 1/2007. The present applicants appeared before the learned Special Judge at Aurangabad and filed discharge

applications at Exh. 52, 99 and 89, respectively. Almost same grounds had been raised by the applicants. They were seeking discharge on the ground that the offence had taken place in between 1999 to 2001. The applicant in Criminal Rev. Appln No. 214/2017 contended that the applicant started working in the said company as a Consultant from September 2000. He worked there till January 2002. He contends that he was not responsible for the management or conduct of the business affairs of the company on day to day basis. The applicant in Criminal Rev. Appln. No. 200/2017 says that there was no material collected by the Investigating Officer against him and that he was inducted as a Director on 15.12.2000. The applicant in Criminal Rev. Appln. No. 205/2017 also says that he was a servant in the said company and had no control over the management and conduct of the business affairs of the company on day to day basis. The real dispute was between the depositors and the Directors. He has not received any amount personally nor he could have taken part in any of the conspiracy allegedly hatched up by the Directors. He was not responsible for floating any scheme. However, all the applicants are contending that since they have no role to play, they can not be vicariously held liable in any capacity.

(4) All the applications were strongly opposed by the prosecution / State stating that already the evidence has been collected which is sufficient and prima facie showing involvement of each of the accused person. The hard earned money of the persons has been collected in the form of fixed deposits by representing them that they will get good amount of interest and, therefore, offence is serious and against the society.

(5) After hearing both sides all the applications were rejected by the learned Special Judge. All the applicants are challenging the orders of rejection of their application for discharge under Section 227 of

the Code of Criminal Procedure in these criminal applications.

(6) Heard Mr. Vishal A. Bagdiya, Mr. Ladda Somnath G. and S. J. Rahate and Mr. Shaikh L. S. and Bide D. A, respectively for the applicants and learned Addl. Public Prosecutor Mr. D. R. Kale for respondent / State. Perused the copy of the charge-sheet. It has been argued on behalf of each of the applicants that the applicants had no role to play in the day to day affairs of the company. The applicant in Criminal Appln. 214/2017 had started working in the company from September 2000 and the fixed deposit scheme was only till 2001. The applicant in Criminal Rev. 200/2017 says that he was inducted in 2015, he can not be vicariously held responsible for deposits allegedly collected from 1997. The period of each of the applicants ought to have been considered. Though the applicant was director, he was dealing with the affairs of the company regularly and the applicant in Criminal Rev Appln. No. 205/2017

was merely the servant working under the company. Statements of witnesses were pointed out, in order to show that for the fixed deposits which were accepted prior to induction of the applicants, they can not be held responsible. The Director's report and the Auditor's report of certain years have been pointed out, in order to show that note has been taken in the Auditor's report dated 30.6.2001, that the company has not accepted any deposits during the year from the public within the meaning of provisions of Sec. 58(A) of the Companies Act, 1956 and Rules made thereunder. Even in respect of the Auditor's report for the year 1st April 1999 to 31st March 2000, the similar remark has been made. It has been prayed by all the applicants that they are not responsible for acceptance of the scheme. They have not committed any offence and therefore, the learned Special Judge ought to have discharged them.

(7) Reliance has been placed on the decision in

Umesh Sharma and Anr. V/s S. G. Bhakta and Ors., reported in 2002 Cri LJ 4843. In this case, it was submitted that the petitioners in Writ Petitions were Directors of the respective companies and they were contending that they were not in charge of and not responsible to the company for the conduct of business. Relying upon **G. L. Gupta V/s D. H. Mehta, (1971) 3 SCC 189,** it was observed that what is legally required is over all control over the day to day business of the company and the firm. If this element is present then only Directors of the company are responsible. A specific averment in respect of such activity or responsibility, the Directors can not be held responsible. In this case Single Judge of this Court has given the distinction between the Manager and Managing Director and, therefore, on the basis of the responsibilities and the role, petitions were allowed.

(8) The learned Addl. Public Prosecutor submitted that some portion of the period after

the induction of each of the applicants is covered because as per the prosecution story the offence had taken place between 1997 to 2001. Therefore, for the portion of the period during which the applicants were in same or other capacity working in the company, first it will have to be said that prima facie evidence is against them and only on certain points, the applicants can not be discharged. Statements of witnesses would show that each one of them have stated about role played by each of the applicants before this Court. Therefore, learned Special Judge was right in rejecting all the applications.

(9) As aforesaid, the prosecution has come with a case that Vatan Textile Ltd. had collected the amount of Rs. 25,55,000/- from 25 depositors from 1997 to 2001 under the scheme of fixed deposits. It was alluring them that handsome interest on the invested amount would be paid. However, after the maturity date the company failed to give them the matured amount. Thus,

it is to be stated that one of the witnesses says about the representation made by the company to them. Because of the representation, it appears that the hard earned money of the witnesses was deposited by them with the sole intention that they would get more interest on the amount that will be deposited. Some of them have received the amount after their retirement in the form of gratuity and provident fund. The act of floating the scheme of fixed deposit would have been result of the resolution of the Directors of the company. Evidence has been gathered to the extent that the applicant in Criminal Rev. Appln. No. 200/2017 was a Director from 2000 onwards. That means even after his induction as a Director, the scheme was in existence for about a year and he may not be responsible for the deposits which were accepted prior to his induction. But, definitely he would be responsible for those transactions which have taken place after his induction as a Director. It is for him to prove at the time of trial that he was not responsible or was not taking part in day to day affairs of the company. The applicant in Criminal Rev. Appln. No. 214/17 says that he was Consultant. It has been rightly observed by the Special Judge that this applicant has not mentioned which consultancy services he was providing to the company. When he himself has not disclosed the nature of his duties with some ulterior motive, he can not lay his hands on the material collected by the Investigation Officer, in order to show that he was not responsible for the day to day affairs of the company. As regards applicant in Criminal Rev. Appln. No. 205/2017 is concerned, though he might be a servant, yet certain duties were assigned to him and in that capacity, as a servant he was responsible for the acts. Here also learned Special Judge has specifically made a remark that the applicant has not mentioned the nature of his job and he has purposely kept it vague. When he was coming with a contention that it was not his job to issue the fixed deposit or convince the depositors, even he ought to have produced certain documents on record, regarding duties cast on him.

(10) The decision in **Umesh Sharma and Anr. V/s S. G. Bhakta and Ors. (Supra)** is not applicable to the facts of present case, for the simple reason that the offence involved in the said case appears to be different because it was a matter, which was tried before Chief Judicial magistrate. The purpose behind enactment of MPID Act is required to be considered and, therefore, observations in the said case as well as other cases on which reliance was placed in the said case being different in nature, can not be made applicable.

(11) At the stage of the revision certain documents were tried to be submitted in the form of resignation from the Board of Directors. However, documents can not be taken into consideration for a simple reason that the document was not before the Trial Court when the impugned order was passed.

(12) Taking into consideration, the amplitude of the offence and when it appears that the poor persons who are either pensioner or old age persons have been duped. This is not a case where the accused should be discharged under Section 227 of the Code of Criminal Procedure.

(13) I do not find any merit in the criminal applications. There was no error on the part of the learned Special Judge, Aurangabad in rejecting all the applications.

Hence, following Order;

ORDER

All the revision applications are dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

ggd/-.