IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.563 OF 2018

PANKAJ KUMAR OZA)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Nanda Kamaldeep Singh, Advocate for the Appellant.

Mr.V.B.KondeDeshmukh, APP for the Respondent – State.

Mr.J.R.Kamble, Police Inspector attached to Goregaon Police Station, present in court.

CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.

DATE : RESERVED ON 6th JUNE 2019
PRONOUNCED ON 24th JUNE 2019

<u>JUDGMENT</u> : **(PER : A.M.BADAR, J.)**

1 By this appeal, the appellant/accused no.3 in MPID Case No.26 of 2014 arising out of Crime No.56 of 2012 registered with Economic Offences Wing, Mumbai, for offences punishable under Sections 420, 406, 120B read with 34 of the Indian Penal

Code as well as under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as MPID Act for the sake of brevity). He is challenging the order dated 9th March 2018 passed by the learned Special Judge under the MPID Act and Additional Sessions Judge, Sessions Court, Mumbai, thereby rejecting his application for discharge.

2 Facts, in brief, leading to the filing of the instant appeal, can be summarized thus :

(a) Crime No.56 of 2012 came to be registered on the basis of the First Information Report lodged by Dilip Vinayak Oak alleging that the financial establishment (Prime Real Venture) had failed to repay the deposits accepted by it. The First Informant averred that he was allured by accused persons to deposit money with the Prime Real Venture with an assurance that on completion of ten months, the deposit will be returned with 50% appreciation of the amount deposited. He was made to understand that after an amount of Rs.1 lakh is deposited, then on completion of ten months, the financial establishment would return the amount of Rs.1.5 lakh to the depositor. In this way, the accused persons collected huge amount from 59 investors.

(b) According to the prosecuting agency, during the course of investigation, it was revealed that accused no.1 Rajesh Narayanprasad Tiwari @ Kashyap and accused no.2 Manohar Pol were earlier working with a Company named "Young and Grow". After leaving that work, they formed a financial Company named Prime Real Venture and allured the depositors to deposit money in the said Company with a promise to return the deposits with 50% appreciation, on completion of ten months of deposit. It is case of the prosecution that appellant/accused Pankaj Oza had taken up the responsibility of setting up of office of Prime Real Venture and he was receiving salary of Rs.1 lakh per month. The accused persons collected total amount of Rs.1,18,30,000/- from more than 60 investors. The appellant/accused received an amount of Rs.1 lakh through cheque from financial establishment and through the appellant/accused it was revealed that he was working as back office staff. He had received an amount of Rs.4 lakh from the financial establishment Prime Real Venture and he had deposited that amount with the Senior Inspector of Police (Administration), Economic Offences Wing, Mumbai, on 6th December 2014.

3 We have heard the learned counsel appearing for the appellant/accused. She argued that there is no iota of evidence to frame the Charge of alleged offences against the appellant/accused and the learned trial court erred in rejecting his application for discharge. The learned APP submitted that from interrogation of the appellant/accused no.3, it was revealed that he was getting salary of Rs.1 lakh per month by working as back office staff, and in this way, he has received an amount totaling Rs.4 lakh from the financial establishment named Prime Real Venture.

4 We have considered the submissions so advanced and perused the material placed on record including the charge-sheet. The learned trial court rejected the application for discharge by holding that whether the appellant/accused was receiving salary from the financial establishment or not is a matter of evidence, and therefore, there are sufficient grounds to frame Charge against the appellant/accused.

5 On perusal of entire charge-sheet and particularly statement of investors recorded by the Investigating Officer, it is seen that none of the investors had named the appellant/accused no.3 as an employee of Prime Real Venture. None of the investors have spoken that the appellant/accused no.3 had ever allured them to deposit money in the financial establishment by promising rosy returns. The charge-sheet does not reflect any evidence to show that the appellant/accused no.3 was working as back office staff on salary of Rs.1 lakh per month. No doubt, the appellant/accused has received an amount of Rs.1 lakh by cheque

from the financial establishment, but there is no evidence to show that the same was towards payment of salary.

6 Offences alleged against accused persons by the prosecuting agency are that of criminal conspiracy, cheating, breach of trust and fraudulent default in repayment of deposit on maturity by the financial establishment. Perusal of the charge-sheet shows that there is no evidence even to infer commission of these offences by the appellant/accused no.3. Ingredients of none of these offences are reflected from the charge-sheet, in so far as the appellant/accused no.3 is concerned. There is no ground for presuming that offences alleged by the prosecution have been committed by the appellant/accused no.3 and material collected by the investigating agency does not even raise suspicion against the appellant/accused no.3, leave apart very strong suspicion.

7 In this view of the matter, the learned trial court erred in rejecting the application for discharge moved by the appellant/accused no.3 in the instant case. Therefore, the order :

ORDER

i) The impugned order dated 9th March 2018 passed by the learned Special Judge under the MPID Act and Additional Sessions Judge, Mumbai, below Miscellaneous Application No.153 of 2015 in MPID Case No.26 of 2014 is quashed and set aside.

ii) Miscellaneous Application No.153 of 2015 filed by the appellant/accused no.3 claiming discharge is allowed.

iii) The appellant/accused no.3 is discharged from MPID Case No.26 of 2014 pending on the file of the learned Special Judge under the MPID Act and Additional Sessions Judge, Mumbai.

iv) The appeal is, accordingly, disposed off.

(A. M. BADAR, J.) **(INDRAJIT MAHANTY, J.)**