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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 45 OF 2020

1. **Sunil Manik Pillewan**
Indian, Male, Age – 36 years,
Service R/o. Room No.1, Samarth
Krupa Nagar, New Mandala,
Sion Turbhe Marg,
Deonar, Mumbai.

2. **Yashwantkumar Rambharoselal Sharma**
Indian, Male, Age – 55 years, Service,
R/o. D/4, Ramkrishna Nagar,
Purnima Talkies Compound
Murbad Road, Kalyan – 421 201. **.. Appellants**
(Ori. Complainant Nos.10 and 11)

Versus

1. **Balaji Properties**
Financial Establishment
Address – Kapurbavadi Lake City Mall,
Ground Floor, G A 22, Thane.

2. **Biren Gunwantrai Pujara**
Indian, Male
Occupation – Proprietor Balaji Properties,
D-122, Gulmohar Society,
Tikujini Vadi, Chitalsar Manpada,
Ghodbunder, Thane.

3. **Tulsi Gunwantrai Pujara**
Indian, Female
Occupation – Proprietor Balaji Properties
D-122, Gulmohar Society,
Tikujini Vadi, Chitalsar Manpada,
Ghodbunder, Thane.

4. **Ganesh Vitthal Kotiyan**
Indian, Male
Occupation – Proprietor Balaji Properties
Room No.210, Anandban Society,
Ruta Park, Vrundavan Society,
Thane.

5. **Sachin Shrawankar**
Indian, Male
Occupation – Proprietor Balaji Properties
C-315, Shalimar Society,
Hill Garden, Manpada, Thane.

6. **Lakshmi (Full Name & Address not known)**
Indian, Female
Occupation – Proprietor Balaji Properties
Contact No.7506335528. **.. Respondents**
(Ori. Accused Nos.1 to 6)

7. **State of Maharashtra,**
Through Senior Police Inspector,
Kapurbavadi Police Station,
Thane. **.. Respondent No. 7**

Mr. S.S. Shrilimaye, Advocate for Appellants.
Mr. Sanjeev B. Deore, Advocate for Respondent Nos.3, 4 and 6.
Mr. H.J. Dedhia, APP for the State.

CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.

DATE : 06th September 2022.

P.C.

. By the present Appeal filed under Section 11 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short "**MPID Act**"), the Appellants/Original Applicant Nos.10 & 11 have impugned Order dated 14.10.2019 passed below Exh.1 in Criminal Misc. Application No. 418 of 2019, thereby rejecting the said application filed by the Applicants for conducting inquiry/investigation under Section 202 of Criminal Procedure Code, 1973 (for short "**Cr.P.C.**") into the offences allegedly committed by Respondent Nos.1 to 6 under the MPID Act.

2. Heard Mr.Shrilimaye, learned Advocate for Appellants, Mr.Deore, learned Advocate for Respondent Nos.3, 4 & 6 and Mr.Dedhia, learned A.P.P. for State. Perused record annexed to the Appeal and Affidavit in Reply filed by Shri. Ashok Wagh, A.P.I. dated 08.01.2022.

3. Briefly the case of the Appellants is that between 31.01.2015 and January 2017, accused in C.R. No.34 of 2018 namely Respondent Nos.2, 3 and 4 herein, collected various amounts from Appellants and such other alleged depositors in excess of Rs.50,00,000/- towards sale of flats and subsequently sold the said flats to third persons by forging documents. It is further alleged that after accepting deposits from various persons towards booking of flats, accused abandoned the development project and it was revealed that they had not obtained any permission for construction. Therefore Anilkumar Ramdatta Singh one of the flat purchaser lodged the aforestated C.R.. Admittedly after investigation charge-sheet has been filed against the accused (Respondents herein)and the case has been numbered as RCC No.973 of 2018 and is pending for trial before the Judicial Magistrate First Class, Court No.2 at Bhiwandi.

4. Appellants preferred Criminal Misc. Application No.418 of 2019 before Additional Sessions Judge, Thane on 26.07.2019 seeking investigation into the offences committed by the accused punishable

under the provisions of MPID Act under Section 202 of Cr.P.C. in the alleged deposits collected by Respondent Nos.2, 3 and 4 on behalf of Respondent No.1 – Balaji Properties. It has been averred in the Application, [copy of which is placed at “Exhibit-B” to the present memorandum of Appeal], that Respondents publicly invited money deposits from investors for construction of Housing Projects at two locations in Grampanchayat Gove, Taluka Bhiwandi, District Thane and lured by those advertisements; Appellants deposited various amounts with Respondents anticipating favourably returns at high interest rates. It is alleged by Appellants that amounts deposited by them have been appropriated by Respondents without providing any interest, services or return of the said amounts to the Appellants.

5. Perusal of Application reveals that save and except the bare statements made in the Application, there is no documentary evidence adduced to support the contention of Appellants that Respondents had accepted various amounts and promised higher return on those investments/deposits interest. It is seen that save and except the banks statement and receipts issued by Respondents to Appellants, there is no other contractual document, promissory note or commercially viable contractual note or document issued by Respondents to Appellants in respect of the alleged deposits claimed to be made by Appellants.

6. Mr. Shrilimaye, learned Advocate for Appellants has drawn our attention to various receipts issued by Respondent No.1 and allegedly signed on behalf of Respondent No.1 regarding various deposits allegedly made by Appellants. These cash receipts are placed at page Nos.46 to 53 of the memorandum of Appeal. Perusal of receipts reveal that these receipts are in respect of final/part payment of various flats in Tulsidham project with the flat numbers specifically mentioned on the said receipts. He submitted that these receipts are to be construed as documentary evidence of the fact that Respondent No.1 had accepted various deposits from Appellants as a financial institution as prescribed and defined under the provisions of Section 2 of the MPID Act. Therefore, Application filed by the Appellants seeking further investigation under the MPID Act is maintainable.

7. We have perused the Application and record of the case which has been placed before us. At the outset, it is to be noted here that, the learned Advocate for the Appellants was unable to answer the basic legal points, as to how an independent application under Section 202 of Cr.P.C. is maintainable before the trial Court, once the police after completion of investigation files Final Report under Section 173(2) of Cr.P.C. in a crime and in particular when the Appellants are witnesses to it. Affidavit of Investigating Officer clearly discloses that the statements of Appellants are recorded in the present crime, which

are supporting the informant. It appears that during the course of investigation the police did not find that the provisions of MPID Act are applicable to the present crime.

7.1. It is seen that the Application filed by Appellants is under Section 202 of the Cr.P.C. Section 202 refers to postponement of issue of process. As noted earlier we fail to understand as to how the Application filed by Appellants before the Trial Court is maintainable for seeking enquiry after filing of chargesheet. According to us the said Criminal Misc. Application No.418 of 2019 filed by the Appellants alongwith other persons was a totally misconceived application.

8. At the further outset, we fail to understand as to how Respondent No.1 can be categorized to be a 'financial institution' so as to come within the ambit of the provisions of the MPID Act. The definition of financial establishment under Section 2(d) of the MPID Act means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society or a banking company. For the sake of convenience Section 2(d) is reproduced herein:-

> *"2(d) "Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)."*

8.1 In the context of the above definition, it is stated that Respondent No.1 is neither a financial establishment nor from the cash receipts referred to and relied upon by Appellants it can be discern that, the said amounts were accepted by Respondent No.1 under any scheme or arrangement. It is reiterated that the cash receipts pertain to acceptance of final/part payment on account of particular flats sold to Appellants. The flat numbers are stated on the said receipts.

8.2 The alleged transaction between Respondent No.1 and Appellants is in respect of purchase of flats. A plain reading of FIR would also abundantly make it clear. The only documents placed on record for our consideration are the cash receipts issued by Respondent No.1 to the Appellants. Perusal of the said cash receipts clearly reveals that Appellants have paid various amounts to Respondent No.1 for purchase of the concerned flat numbers which are mentioned on the cash receipts.

9. Further, perusal of Order dated 10.12.2018 passed in Criminal Bail Application No.1801 of 2018 relied upon by Appellants show that Respondents are developers and had developed about four projects out of which construction of three projects did not commence; construction of one project had commenced but was left incomplete. It is further seen that Respondent had sold some of the flats in the project to two or more persons. This clearly shows that Respondent

No.1 is a developer and transactions between Appellants and Respondents were in the context of sale of flats in the project developed by Respondents. Contention of Appellants that amounts advanced by Appellants were purely in the nature of deposits and should be construed so cannot be acceptable on the face of the only document which is sought to be relied upon by Appellants i.e. the cash receipts issued by Respondent No.1 to Appellants. The cash receipts clearly refer to the flat numbers in the project pertaining to the name of the respective Applicant in whose the name the receipt has been issued.

10. That apart, Appellants have not been in a position to show any other relevant documentary evidence in support of their alleged case that cash receipts issued by Respondent No.1, *inter alia*, pertain to receipt of amounts as deposits 'promising' high interest returns to them.

11. In the present case, it is seen that applicability of the provisions and maintainability of any complaint under Section 13 of the MPID Act is itself not maintainable since the transaction between the Appellants and Respondent No.1 cannot be construed and considered as deposit under the provisions of the MPID Act.

12. Since the offence is already registered and investigation has been completed, charge-sheet has been filed; in view of the above

discussion separate cognizance is not required to be taken under the provisions of MPID Act as it do not so warrant in the facts and circumstances of the present case. We concur with the Order dated 14.10.2019 passed by the learned Additional Sessions Judge, Thane. There is no infirmity in the said Order passed while disposing of Criminal Misc. Application No.418 of 2019.

13. There are no merits in the Appeal and it is accordingly dismissed.

[MILIND N. JADHAV, J.] **[A.S. GADKARI, J.]**

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2022.09.13 14:57:54 +0530