**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.101 OF 2021**

Sanjay Kerba Durge
And Others … Petitioners
Versus
State of Maharashtra
And Others … Respondents

***

Mr. Nirmal Pagaria a/w Ms. Kranti Garg i/b Dhairyasheet V. Sutar for the Petitioners.
Ms. M.H. Mhatre, APP for Respondent No.1-State.

***

**CORAM : PRASANNA B. VARALE &**
**S. M. MODAK, JJ.**

**DATE : 28 MARCH, 2022**

**JUDGMENT : (Prasanna B. Varale, J.)**

. Heard learned Counsel for the Petitioners.

2. The Petitioners are before this Court with a principal prayer of transferring investigation in FIR No.764 of 2018 registered in Shahupuri Police Station, Kolhapur under Sections 120B, 406, 420 of Indian Penal Code read with Section 3 of the Maharashtra Protection of Interests of Depositor's (In Financial Establishments) Act, 1999 ("MPID Act") to appropriate agency, i.e. State CID for investigation and other principal prayer was prayer (c), seeking directions to the Respondents to initiate an action under Section 4 of MPID Act against the company, namely, Maker Group Company and accused in FIR bearing C.R. No.764 of 2018.

3 Perusal of the copy of the report dated 8 December 2018 submitted at the instance of Petitioner Sanjay Kerba Durge shows that the Petitioners and some other persons initially invested certain amounts in the company, namely, Maker Group India and subsequently, they were engaged by the company as an agents of the company. It is stated in the statement that the representatives of the company used to arrange meetings and conferences at various places and these representatives used to paint a very rosy pictures of the company and were invited the attendees for investments of the company not only with handsome returns, but with additional benefits, such as gift articles, like four wheeler or some costly articles. The Petitioners as well as other depositors being influenced by an assurances, deposited the amounts and on scheduled date of returns, they found that these assurances were nothing, but false assurances. It is alleged in the report that by obtaining signatures on certain documents, the accused persons subjected to the landed properties of these depositors against the investments. It is also stated in the report that certain cheques were issued to some of the depositors and at the time of depositing the cheques, it revealed that due to insufficient fund, cheques were bounced. Those Petitioners and other depositors approached Police Authorities by lodging report. The offences under Sections 120-B, 406, 420 of the Indian Penal Code were initially attracted against the accused persons.

4 On the grievances raised in the Petition, initially, Notice was issued by Division Bench of this Court vide Order dated 21 December 2020. On 4 October 2021, when the matter was listed before this Court, the following Order was passed, which reads thus :-

> "As regard the grievance of the learned Counsel for the Petitioners that no proclamation under the Maharashtra Protection of Interests of Depositor's (In Financial Establishments) Act, 1999 for the purpose of attaching the property/ies is not yet issued, the learned APP seeks time to take instructions as regard the stage/status of the matter.
> 2. At the request of the learned APP, stand over to 18 October 2021."

5 In response to notice, the affidavit-in-reply is filed through S.M. Yadav, Police Inspector-Respondent No.5. Learned APP also submitted a copy of the detailed report for our perusal. The report is submitted to the Office of Public Prosecutor on 7 December 2021. A copy of the report is marked as '**X**' for identification.

6 It may be useful for our purpose to refer to certain statements of the Affidavit-in-Reply:-

> "4. I say that the prosecution case in brief is as under :-
>
> That the Orig. complainant namely Sanjay K. Durge, Petitioner No.1 hereinabove lodged FIR with Shahupuri Police Station, Kolhapur inter alia stating therein that a company namely Mekar Agro Estate Pvt. Ltd. exhibited several schemes floated by them. Under such bonafide belief, the Petitioners and other persons invested their money in those plans and in pursuance to that the Director of the company executed Memorandum of Understanding (M.O.U.) with the Petitioners and other investors. It is further case of Orig. complainant that after completion of the term of their respective investments, the Orig. complainant and other investors visited the office of the said company at Kolhapur. However, the office premises of the said company namely Mekar Agro Estate Pvt. Ltd. had closed down and the employees and the aforesaid persons could not be reached through any mode of communication. It is the case of the Orig. complainant that thus, the said company i.e. Mekar

Agro Estate Pvt. Ltd. cheated almost 45,000 investors and duped them to the tune of Rs.56,44,52,831/-.

On the basis of the complaint lodged by the orig. complainant, offence vide CR No.764/2018 under Sections 420, 406, 409, 120-B of India Penal Code and u/s 3 of MPID Act was registered with Shahupuri Police Station, Kolhapur on 08.12.2018 and investigation was commenced.

5. I say that initially the offence was registered with Shahapuri Police Station on 08.12.2018 and looking to the volume of amount of offence, the investigation was transferred to Economic Offences Wing, Kolhapur on 14.12.2018 as per the directions of the superior authority. I further say that in the instant case, initially the investigation was assigned to Assistant Police Inspector Mr. Kumar Kadam and after his transfer, the investigation was assigned to Police Inspector Mr. Dilip Jadhav and after his retirement, the investigation was assigned to me on 10.09.2019 and presently I am the Investigating Officer.

6 I say that during the course of investigation, the investigating agency arrested accused namely Bhaskar B. Limkar on 26.02.2020.

7 I say that during the course of the investigation, it revealed that the accused No.2 namely, Manohar S. Ambulkar was owned an immovable property situated at Village Baveli, Gaganwada, Dist. Kolhapur. I further say that it also revealed that the accused No.18, namely Purshottam M. Hasamnis was owned an immovable property situated at village Tamgaon, Karveer Tahasil, Dist. Kolhapur. It also revealed that the accused No.17 namely Dnyandeo B. Kurundwade was owned an immovable property situated at village Savarde, Tal. Hatkanangale, Dist. Kolhapur. I further say that during the course of investigation, the investigating agency attached those properties under Section 4 of the MPID Act, 1999 and also freezed the Bank Accounts of the aforesaid company and accused persons.

8 I say that during the course of investigation, it revealed

that the accused namely (1) Ramesh Valse-Patil, (2) Manohar S. Ambolkar, (3) Shreedhbar Khedekar, and (4) Bhaskar Limkar have also involved in an offence vide CR No.344/2018 u/secs.406, 420, 418, 34 of Indian Penal Code r/w Sec. 3 of MPID Act was registered with Pimpri Chinchwad Police Station, Dist. Pune.

10 I say that during the course of investigation, the investigating agency recorded statements of various witnesses and made correspondence with the governmental agencies as well as nationalized and private banks. I further say that the investigating agency during the course of investigation arrested two accused in the aforesaid CR. I further say that the investigating agency also made strenuous efforts for tracing the accused persons at their residence and native places. I further say that proposal bearing O.W. No.1752 of 2019 dated 08.11.2019 in respect of Proclamation against accused persons was sent to the Learned Sessions Court at Kolhapur.

11. I further say that after completion of investigation, the charge sheet was submitted against accused namely Bhaskar B. Limkar before the Competent Court in MPID Special Case No.79 of 2020 on 28.04.2020 by keeping the provisions u/s. 173(8) of Code of Criminal Procedure.

12 I say that during the course of investigation, some immovable properties were attached and proposal dated 21.07.2020 was also submitted before the Competent Authority, i.e. Collector and others and two accused were arrested and further investigation is going on. In support of this statement, a copy of the said proposal is also placed on record as Annexure 'A', page 188 of the affidavit-in-reply."

7 It is further stated in the affidavit-in-reply in para-15 : I say that till date, the investigating agency recorded statements of 122 witness and also obtained documents from 8985 investors. I further say that the investigating agency revealed total misappropriation of amount to the tune of Rs.27,45,47,500/-."

8 In the report, specific references are made to statements of 122 witnesses. Then communications forwarded to various authorities, action taken for search and seizure of the immovable properties of the accused persons. Search and seizure of various communications reflecting financial transactions of the accused persons with finance companies or banks, exchange of communications with the Office of Registrar of Companies. Then there is a specific reference to the action initiated by the Investigating Agency under the caption "सदर गुन्ह्यात एमपीआयडी कायद्यान्वये करणेत आलेली कारवाई ", meaning thereby, the steps taken or action initiated under the provisions of MPID Act. Then there is also reference of filing of charge-sheet on 28 April 2022 in the Court of District and Sessions Judge, MPID Court, Kolhapur and MPID Special Case No.79/2020. Then there is reference to filing supplementary charge-sheet against accused No.17 Purshottam M. Hasamnis on 19 December 2020.

9 Considering all above referred aspects, we are of the opinion that the Respondent-Authorities have acted in due diligence and have initiated proper action and have taken steps. They have taken timely steps in the course of investigation The provisions of MPID Act are attracted in the matter. We are unable to find any fault in the process of the investigation. There is nothing on record to arrive at the conclusion that the Investigating Agency is either negligent in the course of investigation or acted *mala fide*. Taking into consideration the above referred aspects, we are of the opinion that grievance of the Petitioners is properly redressed. The Petition is devoid of merit and the same is accordingly dismissed.

RAJESH VASANT CHITTEWAN Digitally signed by RAJESH VASANT CHITTEWAN Date: 2022.04.05 13:20:45 +0530

**(S. M. MODAK, J.)** **(PRASANNA B. VARALE, J.)**