IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.563 OF 2021

APPELLANT:- Sanjay Ramdas Borkar, aged about 45 years, Occu.Business, R/o Plot No.3, Dayalu Society, Near Uday Lawn, CMPDI Road, Jaripatka, Nagpur.

...VERSUS...

RESPONDENT :- State of Maharashtra, through Police Station Officer, Police Station, Ajani, Nagpur

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Mr.A.S.Dhore, counsel for the appellant.
Mr. M.J.Khan, APP for respondent

CORAM : SUNIL B.SHUKRE & G.A.SANAP, JJ.
DATE : 13.06.2022.

O R A L J U D G M E N T (Per :Sunil B.Shukre, J.)

This appeal is already admitted.

2. Hence, heard finally by consent of the learned counsel appearing for the parties.

3. The appellant has been convicted by the Special Judge, under The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short herein after referred to as the 'MPID Act'), for three offences for which separate sentences of punishments have been passed by the learned Special Judge, by his judgment and order dated 30.03.2021. Being aggrieved by the same, the appellant is before this Court.

4. The appellant was prosecuted and tried for the offences of cheating, criminal breach of trust and fraudulent default, punishable respectively under Sections 420 and 406 of the Indian Penal Code and Section 3 of the MPID Act.

5. It was alleged that the appellant posed himself as a Director of the Company by name Krushak Mitra Organic Farming And Rural Development Agency, engaged in the business of Vermicompost Project. It was further alleged that the appellant approached different persons in or about the year 2010 and

informed them that he was the Director of the said Company and that if they made investment in his company to the extent of Rs 49,960/- for one year, he would pay them an amount of Rs.2,125/- per month for one year and at the end of the year, he would also return the principal amount of Rs.49,960/-. By informing so, it is further alleged that the appellant allured various persons to invest the amount of Rs.49,960/- for one year and in some cases, further amounts for extended periods of time. It is alleged that these persons invested these amounts believing in the truthfulness of the appellant and the promises given by him only to find later on that they were deceived by the appellant. Accordingly, FIR was lodged by PW-3 Pramod Shinde on 29.01.2019 at Police Station Ajni on the basis of which aforestated offences were registered against the appellant and investigation was initiated. In due course, charge-sheet was filed and the appellant was tried for the said offences. The appellant was ultimately convicted for each of the offences and sentences of punishments for four years each, for the offence of cheating and fraudulent default and sentences of punishment of two years for the offence of criminal breach of trust, respectively punishable under Section 420 of the Indian Penal Code, Section 3 of the MPID Act and 406 of the Indian Penal Code were handed out. The appellant has challenged before this Court the judgment and order dated 30.03.2021 before this Court by which the aforestated punishments have been awarded to the appellant.

6. The learned counsel for the appellant fairly concedes the fact that there is an evidence against the accused for the offence punishable under Section 406 of the Indian Penal Code and also section 3 of the MPID Act. He however, submits that since the appellant had returned some amounts to the respective investors, who are the prosecution witnesses from PW-1 to PW-6, by no stretch of imagination, could it be said that, there was dishonest intention on the part of the appellant/accused since inception. The learned counsel for the appellant further submits that the only mistake that the appellant committed is acceptance of various deposits from the investors, examined as prosecution witnesses from PW-1 to PW-6, without obtaining prior permission of Reserve Bank of India. He also submits that since, the appellant failed to return some portions of the investments and in some

cases the cheques issued by him for different amounts to various investors were dishonoured, may be the offences of criminal breach of trust, punishable under Section 406 of the Indian Penal Code and fraudulent default under Section 3 of the MPID Act are constituted in the present case and therefore, he would not raise any challenge in respect of the findings recorded by the trial Court. The learned counsel for the appellant submits that the appellant does not have any criminal antecedents and this was genuinely a case of misfortune visiting the appellant for some reasons not entirely within the control of the appellant and therefore, some leniency may be shown to the appellant. He, therefore, prays for modification of the sentences of punishment from four years to the period already undergone by the appellant. He submits that the appellant was arrested on 29.01.2019 and thus, had put in almost three and half years in jail and according to him, this punishment is sufficiently deterrent as well as reformative for the appellant.

7. The learned APP submits that not only the offences punishable under Section 406 of the Indian Penal Code and under

Section 3 of the MPID Act are made out, but the offence of cheating punishable under section 420 of the Indian Penal Code is also established beyond reasonable doubt and therefore, there is no need to interfere with all the findings of guilt recorded by the trial Court. He submits that total amount of misappropriation and fraudulent default is to the extent of Rs.37,70,320/- and considering this amount, an appropriate order regarding sentences awarded to the appellant be passed.

8. On going through the depositions of the prosecution witnesses namely, PW-1 Sharad Gedam, PW-2 Shrikrishna Bondade, PW-3 Pramod Shende, PW-4 Surajlal Dhahare, PW-5 Manoj Raulkar and PW-6 Moin Sani Mohd. Jabir, who are the persons from whom the appellant had accepted different amounts on different dates, which amounts were returned partly in some cases and not returned in some cases by the appellant and the entire record of the case, we find ourselves in agreement with the submissions of the learned counsel for the appellant. All these witnesses, have unanimously deposed before the trial Court that after accepting the amounts from them, the appellant had

returned the amount of Rs.2,125/-, as already promised by him, on monthly basis, although the period for which such returns continued differs. In the cases of PW-1 Sharad and PW-2 Shrikrishna, this amount of Rs.2,125/- has been continued to be paid every month for a period of six months, in the cases of PW-3 Pramod Shende and PW-6 Moin Sani, this amount of Rs.2,125/- was continued to be paid to them for a period of three months and in the cases of PW-4 Surajlal and PW-5 Manoj, this amount of Rs.2,125/- was continued to be paid for two months. The fact that the appellant kept a part of his promise by paying each of the witnesses, the amount of Rs.2,125/- on monthly basis for a certain period of time itself shows that that there was no dishonest intention on the part of the appellant since beginning of the transaction. It further shows that due to some reasons, which the appellant has not disclosed properly, the appellant could not return the remaining amount. If this is so, it would be a case of mere breach of promise and not any case of cheating the investors, thereby not fulfilling the ingredients of offence of cheating punishable under Section 420 of the Indian Penal Code. To this extent, therefore, we find that the finding of guilt recorded by the trial Court for an offence punishable under Section 420 Indian Penal Code is incorrect and needs to be interfered with.

9. As regards the remaining two offences, viz., criminal breach of trust punishable under Section 406 of the Indian Penal Code and fraudulent default punishable under Section 3 of the MPID Act, we find that findings of guilt recorded in respect of each of these offences by the trial Court are correct as they are based upon proper appreciation of evidence and reaching proper conclusions thereafter. Although there was no intention of cheating since beginning, we find that later on the appellant, having failed to return the amounts accepted by him and in some cases even cheques issued by him to the investors having been dishonoured, the offence of criminal breach of trust is completely established without any doubt and therefore, the findings recorded in this respect by the trial Court need no interference. As regards the offence punishable under Section 3 of the MPID Act, we are of the view that the appellant admittedly did not possess any permission from the Reserve Bank of India to accept the deposits and even then he accepted the deposits and not only that

he failed to keep his promise completely and therefore, even this offence of fraudulent default can be said to be established by the prosecution beyond reasonable doubt.

10. Now the question is as to whether, or not this Court should reduce substantive sentences of punishment by taking a lenient view. We are of the opinion that leniency deserves to be shown to the appellant considering the fact that he has no criminal record and that this is not purely a case of cheating and entering into transactions with the investors with fraudulent intention since inception. Besides, the appellant has already spent about three and half years in jail from out of four years of rigorous imprisonment, the punishment awarded to him for the offence of fraudulent default under Section 3 of the MPID Act. We are, therefore, inclined to reduce this substantive sentence to the period of jail already undergone by the appellant. However, we would not make any interference with the default sentences awarded by the trial Court for the offences punishable under Section 406 of the Indian Penal Code and Section 3 of the MPID Act.

11. In the result, the appeal is partly allowed. The conviction and sentence of the appellant for an offence of cheating punishable under Section 420 of the Indian Penal Code are hereby quashed and set aside. The conviction of the appellant for the offence of criminal breach of trust punishable under Section 406 and offence of fraudulent default punishable under Section 3 of the MPID Act is upheld and confirmed. However, substantive sentence of punishment awarded to the appellant for the offence punishable under Section 3 of the MPID Act is modified and reduced to the period of detention already undergone by the offender. The rest of the part of operative order including the fine amounts imposed and default sentences awarded by the trial Court for the offences punishable under Section 406 of the Indian Penal Code and Section 3 of the MPID Act, is confirmed.

(G.A.SANAP, J) **(SUNIL B. SHUKRE,J)**

Kavita