IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.66 OF 2023

IN

CRIMINAL APPEAL NO.13 OF 2023

Om Sai Capital Leasing & Finance Pvt. Ltd. & Anr. .. Applicants

Versus

The State of Maharashtra & Ors. .. Respondents

...

Mr.Sanjeev Kadam with Mr.Ramdas Hake Patil for the Applicants.

Ms.Anamika Malhotra, A.P.P. for the State.

API Shrikant Dhumal, attached to EOW, Unit-8, Mumbai, present.

...

CORAM: BHARATI DANGRE, J.
DATED : 12th APRIL, 2023

<u>P.C</u>:-

1. By the present application, Appellant No.2/Applicant seeks suspension of sentence imposed on him, pursuant to his conviction in MPID Special case Nos.08 of 2005, 11 of 2003, 10 of 2012 and 110 of 2012. The impugned judgment delivered on 08/12/2022, convicted Applicant for committing an offence under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short, **"the MPID Act"**) and for committing the offences punishable under Sections 406 and 420 of the Indian Penal Code (for short, **"the IPC"**). For committing the offences under Sections 406 and 420, he is sentenced to suffer R.I. for a period of two

years and to pay fine of Rs.5,000/- each, whereas upon his conviction under Section 3 of the MPID Act, he is sentenced to suffer R.I. for two years and to pay fine of Rs.90,000/-, in respect of four distinct MPID cases.

2. Heard learned counsel Mr.Kadam for the Applicant and the learned A.P.P. for the State.

I have perused the impugned judgment alongwith notes of evidence, which have been placed on record.

At the outset, Mr.Kadam would question the legality of the impugned judgment on the ground that the learned Judge has failed to take into consideration an important aspect, very fundamental to criminal jurisprudence, being that the MPID Act came into force w.e.f. 29/04/1999, being enacted for protection of interest of depositors in financial institutions. On perusal of the events placed before the Court through distinct persons, who projected themselves as investors, it can be seen that the amount came to be invested with the Applicant for the period commencing from 1993 to 1996 and in any case, it was prior to coming into force the MPID Act.

According to Mr.Kadam, the law being well settled that the person cannot be punished for an act, which was not an offence at the time of it's commission. It is also submitted that this objection was also raised before the learned Judge, but he overruled the same on frivolous ground.

I find sufficient substance in the submission and considering the said ground raised in the Appeal, the Appeal already admitted.

3. The sentence imposed upon the Applicant is two years of R.I. alongwith fine. It is informed by Mr.Kadam that as far as direction in respect of payment of fine is concerned, it is already complied with.

Apart from this, it is also the submission of Mr.Kadam that pursuant to the distinct orders passed by the Division Bench from time to time, in the proceedings pending before it, a sum of Rs.40,00,000/- came to be deposited, which is lying in the account of the competent authority. As on date, calculating the interest accrued on the said amount, the figure is said to be Rs.49,60,346/-. The total amount invested by 19 investors, as per the prosecution, is Rs.70,73,000/-.

The learned A.P.P. do not dispute that the aforesaid amount is lying with the competent authority. There is some gross error in the impugned judgment, as it has directed the competent authority to seize required amount from the Applicant from sum of Rs.1,85,00,000/- and put it to use for repaying the amount of investors. However, it can be seen that the said direction issued to deposit the amount of Rs.1,85,00,000/- is quashed and set aside by the High Court on 16/06/2016 itself. Surprisingly, the learned Judge has drawn an inference that since the order is cancelled, it means that Applicant has retained the said amount. However, without going into the said controversy, which will have to be appreciated at the time of hearing of the Appeal, suffice it to direct at present, that the amount of Rs.49,45,425/-, which is lying with the competent authority shall be distributed between the investors on Pro Rata basis, as the competent authority deem it fit. This exercise will be carried out within a period of six weeks, as ultimately, whether the provision of MPID Act could have been invoked in the said subject matter would be a matter of determination, but for that, the amount handed over to the Applicant by the persons cannot be withheld and, therefore, every endeavour must be made to repay their money, in whatever form it was deposited.

4. The bonafides of the Applicant are already proved by deposit of more than 50% of the amount, which is alleged to have been received by him and I have already issued a direction to distribute the amount between the investors. Considering the sentence imposed under the impugned judgment and in the wake of the decision of the Hon'ble Supreme Court in the case of ***Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujarat***[1], he deserve a relief prayed in the application.

5. The sentence imposed upon the Applicant by the impugned judgment dated 08/12/2022 stands suspended, pending the adjudication of the Appeal.

The Applicant shall be released on bail on furnishing P.R. Bond to the extent of Rs.50,000/-, with one or more sureties in the like amount.

6. The Application stands disposed off.

(SMT. BHARATI DANGRE, J.)

1 (1999) 4 SCC 421

M.M.Salgaonkar