IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1032 OF 2021

Prema Mansharamaney and Ors. .....Appellants
V/s.
The State Of Maharashtra & Ors. .....Respondents

Mr. Aditya Pratap a/w Mr. Zaurvar Abidi i/by Aditya Pratap Law Office for Appellants.
Mr. Sandeep C. Kekane for Respondent No.4.
Mr. Niranjan Mundargi a/w Mr. Chandansingh Shekhawat and Ms. Samruddhi Bendbhar i/by Parinam Law Associates for Respondent No.5.
Mrs. S.D. Shinde, A.P.P. for the Respondent-State.

CORAM : A. S. GADKARI AND PRAKASH D.NAIK, JJ.

DATE : 13th FEBRUARY, 2023.

P.C.:-

. This Appeal is preferred under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (herein after referred to as "MPID Act") impugning the Order dated 12.07.2021 passed by learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai in Miscellaneous Application No.482 of 2021.

2. The Appellants had preferred Miscellaneous Application No.482 of 2021 before the Designated Court under the MPID Act at Mumbai, seeking directions under Section 156(3) of the Code of Criminal Procedure, 1973, (for short "Cr.P.C.") directing the Senior Inspector of Police, Bandra, Police Station, Bandra (West), Mumbai to register the First Information Report

(herein after refereed to as "FIR") under Sections 406, 420 read with Sections 120-B, and 34 of Indian Penal Code with Section 3 of the MPID Act and Section 3 of The Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The Appellants had contended that, the accused had dishonestly and fraudulently raised huge amounts as the principal deposit from the Appellants. The accused entered into a conspiracy to carry out a deposit-raising operation and to commit fraudulent default on the same. The accused signed the Bills of Exchange as 'Acceptor' by giving an impression that, the Bills of Exchange, which were payable "On Demand" would be honoured upon presentation by the holder, namely the Appellants. The accused never intended to return the deposits and there was intention to cheat right from inception and misappropriate the amount.

3. The application seeking directions under Section 156(3) of Cr.P.C. was rejected by the Designated Court vide Order dated 12.07.2021.

4. Learned Advocate for the Appellants submitted that, the impugned Order is contrary to law. The findings of the Designated Court that, the receipt of money by the accused from the Appellants does not come within the purview of "Deposit" under Section 2(c) of the MPID Act is erroneous. Section 2(c) of the MPID Act provides for 'any receipt of money' which is to be returned with or without benefit in the form of interest, bonus, profit etc. to be a "Deposit". The said provision also enlists the amount of money that are not to be included in deposits and it is evident that the deposits

raised by the accused do not fall under any of the exclusion in that list. The learned Designated Court also committed an error while holding that the accused does not fall within the definition of "Financial Establishment" as per the MPID Act. The definition is broad and it covers any person accepting deposit under any scheme or arrangement or in any other manner. The learned Judge has not appreciated the object of the MPID Act. It was also an error to hold that, there was no scheme or arrangement under which the accused raised the deposits. The arrangement of the accused was to approach the persons seeking short-term deposits for their business and luring them to transfer money to them as deposits. The accused promised good rate of interest on the deposits and claimed to return the money on demand by issuing Bills of Exchange payable on demand upon each deposit amount. It was also represented that, the interest would be paid to keep the depositors engaged for some time and to gain their trust, which was breached by committing default. The learned Judge has misinterpreted Section 2 of the MPID Act, while interpreting the term "Deposit". This was a fit case to issue directions under Section 156 (3) of Cr.P.C. to register the FIR as prima facie all the offences enumerated in the application were made out which warranted investigation by Police.

5. Learned Advocates appearing for Respondent Nos.4 & 5 supported the impugned Order and submitted that, the Appeal is devoid of merits and deserves to be dismissed. It is submitted that, there is no allegation of any

offence as alleged by the Appellants and there is no infirmity in the impugned Order passed by the Designated Court. The Appellants have initiated civil proceedings in respect to the same transaction before this Court by filing Commercial Summary Suit No.5 of 2022, being Plaintiffs in the said suit. Having exhausted the civil remedy and in the absence of criminality in the transactions, the impugned Order does not call for any interference.

6. We have perused the documents on record including the application preferred by the Appellants seeking investigation under Section 156(3) of Cr.P.C. and the impugned Order dated 12.07.2021. We do not find any reason to set aside the impugned Order passed by the Designated Court. The grievance of Appellants is that, the accused in furtherance of common intention, accepted Rs.71,50,000/- from the Appellants against the Bills of Exchange and committed fraudulent default in repayment of the same. The learned Designated Court has rightly refused to grant the prayers for investigation. The Designated Court has observed that, the contents of Miscellaneous Application indicated that, "the accused Nos.2 and 3 are acceptors of Bills of Exchange issued by accused No.1 against money advanced by the Applicants". The Applicants/Appellants issued legal notices to the Respondents to pay amount of Bills of Exchange or to face an action under Civil or Criminal Laws. The contents of notice mentions that, "Against the deposit advanced by the undersigned holder against the Bills of

Exchange, Noticee No.1 was to pay simple interest at the rate of 12% per annum. Such interest was payable in advance on a quarterly basis". The word "Advance" is used to convey a meaning that, a money is given as a loan by a lender to or for benefit of the borrower. The fact that, the interest was to be paid soon after the advance makes it clear that, it was a loan given for the benefit of the borrower and the latter agreed to repay the same with interest. There was no date of maturity of such advances. From the use of word "Advance" in the application and notices, it transpires that, the money was advanced to the respondents and the latter were to pay quarterly interest at the rate of 12% per annum. Thus, the receipt of money by the respondent does not come within the purview of "Deposit" under Section 2(c) of the MPID Act. The learned Special Judge then referred to the object of MPID Act and observed that, if the transaction in the instant case is considered, it cannot be said that, the Respondents accepted the deposits under any scheme or arrangement to come within the purview of the definition of "Financial Establishment" under the MPID Act, thereby Section 3 of the MPID Act is not attracted in this case. It was further observed that, the Appellants are not precluded from seeking other remedies available under the law in proper forum to address their grievances, if so desired. Perusal of "Bills of Exchange' relied upon by the Appellants reveals that, it nowhere mentions that, the Respondent Nos.4 & 5 had agreed or promised to give higher rate of interest than prescribed by

Reserve Bank of India to the Appellants. On analyzing the factual matrix of this case and the provisions of the MPID Act, more particularly the definition of “Deposit” and “Financial Establishment” as defined under the MPID Act, we do not find any reason to interfere in the findings and the impugned Order passed by the learned designated Court. Apparently, Civil Commercial Summary Suit has been filed by aggrieved persons in this Court with a prayer that, the defendants therein (Respondents) to be ordered and decreed to pay the amount enumerated therein along with interest. Even otherwise no case for police investigation vide Section 156(3) of Cr.P.C. was made out.

7. In the aforesaid facts and circumstances, no case is made out for setting aside the impugned Order and the Appeal is required to be dismissed.

8. Appeal is dismissed.

(PRAKASH D. NAIK, J.) **(A.S. GADKARI, J.)**