



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

Criminal Revision Application No. 130 of 2023

Shri Ajay Krushnarao Ladhve,
Aged about 47 years, occu:- Pvt. Work,
r/o Krushnakant Villa, Behind Rajebaba Temple,
Itwari Peth, Umred, Dist. Nagpur.

... Applicant

- Versus -

(1) State of Maharashtra
Through P.S.O., Police Station,
Sitabuldi, Nagpur.

(2) Economic Offences Wing, Nagpur,
Civil Lines, Nagpur.

**... Non-Applicants/
Respondents**

None for the applicant

Mr. A. R. Chutake, APP for the State/non-applicants

Mr. A. C. Dharmadhikari, Amicus Curiae

CORAM : ANIL L. PANSARE, J.

DATE : 21-12-2023

P. C.

Heard.

2. On 13-12-2023, following order was passed.

“The question is, can the investigating agency take cognizance of the offence directly when Section 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, which has overriding effect, provides that the complaint received from the

depositors will have to be routed through the Collector to the investigating agency.

Learned counsel Mr. A. C. Dharmadhikari is requested to act as Amicus Curiae.

Learned APP shall provide the documents to learned Amicus Curiae.

Stand over to 21-12-2023.”

3. Mr. A. C. Dharmadhikari, learned *Amicus Curiae* joined by Mr. A. R. Chutake, learned Additional Public Prosecutor have invited my attention to the judgment of this Court in the case of ***Rajiv Ramanlal Shah Vs. The Senior Inspector of Police General Branch and ors. [2002 ALL MR (Cri) 761]***. The Division Bench was *inter alia* has considered the scope of Section 3 and Section 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short ‘MPID Act’) and in doing so, the Court in paragraph no. 6 has reproduced Section 3 of the MPID Act and proceeded to take a view as under :

“6.

In our opinion, it is possible to harmoniously construe both sub-section (3) of section 4 and section 3. Sub-section (3) of section 4 provides that in the course of any investigation into complaints received by the Collector under Section 4(3) of the Act for preparing his report to be submitted to the State Government for passing the order under sub-section (1) of section 4, the Collector shall also send a copy of the complaint to the concerned District

Police Superintendent or the Commissioner of Police as the case may be for investigation. In other words, the law mandates the Collector to send a copy of the complaint to the District Police Superintendent or Commissioner of Police for investigation. There is at least nothing further in the sub-section which says that it is only the District Superintendent of Police or the Commissioner of Police who can only proceed to investigate the complaint. It is only that the sub-section requires that a copy be sent to the District Superintendent of Police or Commissioner of Police for investigation. It does not mean and cannot mean that because of complaint has to be forwarded to the District Police Superintendent or the Commissioner of Police that the provisions of section 156 of the Criminal Procedure Code are excluded. The sending of the complaint is merely a procedural requirement. Once such a complaint is received that complaint can only be acted upon under section 3. On reading of section 3 it is clear that the complaint need not be, by more than one person. The complaint for the purpose of investigation can be by an individual also. On the complaint being received it can be investigated by an officer considering the provisions of section 156 of Criminal Procedure Code and other provisions. In so far as sub-section (3) of section 4 is concerned all that it provides for is preparation of a report based on complaints received, to enable the State Government to pass an order under sub-section (1) of section 4. The later part of sub-section (3) of sending the copy for investigation to the District Superintendent of Police or Commissioner of Police for investigation could be to enable the Collector to prepare the report for sending it to the Government. Though on a literal reading of the section this view may not be possible. The other meaning is to send the complaint for the purpose of investigation to the Deputy Superintendent of Police or Commissioner of Police who can direct that the complaint may be investigated. This investigation can only be in terms of section 3 of the Act read with section 156 of Criminal

Procedure Code so as to read provisions of the Act and Criminal Procedure Code harmoniously. This harmonious construction would meet the objects of the act and not defeat it otherwise it would tantamount to contending that whereas the object of the act was to protect the small investors from being duped of their money, by reading into section 3 of the Act something not provided therein, the very purpose of the Act would be defeated. That to our mind, is not for which the act was enacted for. A complaint by a single individual under section 3 is maintainable. The other sections would come into play only when the designated Court takes cognizance of the complaint of which it has exclusive jurisdiction. That would be the second part with which we are really not concerned in the present petition. The question therefore of delegation of powers by the District Superintendent of Police or Commissioner of Police does not arise at all as they are not the Investigating Officers.”

4. Thus the Division Bench has noted that it is possible to harmoniously construe sub-section (3) of Section 4 and Section 3. The Court has further noted that under sub-section (3) of Section 4, the Collector has to send a report to the State Government and is also duty bound to send the copy of complaint to the concerned District Police Superintendent or the Commissioner of Police, as the case may be, for investigation.

5. Mr. Dharmadhikari, learned *Amicus Curiae* submits that the Collector has no option but to send the complaint to the concerned

District Police Superintendent or the Commissioner of Police, as the case may be. In that sense, the investigation will follow come what may.

6. Mr. Dharmadhikari has further submitted that in a given case, if the complaint is filed under Section 420 of the Indian Penal Code read with Section 3 of the MPID Act, the investigating agency cannot be prevented from investigating the matter on the ground that Section 4 of the MPID Act has overriding effect. According to him, Section 4 is meant for immediate action at the hands of Collector to protect the interest of the depositors by conducting enquiry upon a complaint received from the depositors and by sending report to the Government at the earliest so that the money or other properties acquired by the financial establishments could be attached. Accordingly, he submits that section 4 is meant for taking immediate steps to protect interest of depositors by attaching property of financial establishments which the investigating agency cannot do.

7. On the point of attachment of property, Mr. Dharmadhikari has relied upon judgment of this Court in the case of ***Shri Sant Gajanan Maharaj Urban Credit Co-operative Soc. Ltd., Nagpur Vs. Deputy Commissioner of Police, Crime Branch, Nagpur City and anr.*** in ***Criminal Writ Petition No. 1034/2019***. The Division Bench in paragraph no. 7

has held that the property, whether movable or immovable, can only be attached under the provisions of the MPID Act in the manner as prescribed in Section 4 of the MPID Act.

8. Mr. Dharmadhikari submits that police may seize movable property relating to offence alleged but is not empowered to attach movable or immovable properties.

9. That being so, the Division Bench of this Court has already held that Section 3 and Section 4 of the MPID Act can go together, which indeed appears to be so in the light of the two judgments referred to above. This leads to the conclusion that complaints received under Section 4 by the Collector from the depositors, though will have to be routed through the Collector to the investigating agency, the investigating agency is empowered to take cognizance of the offence under Section 3 of the MPID Act. No further discussion is thus required.

10. A word of appreciation for Mr. A. C. Dharmadhikari, learned *Amicus Curiae* for ably assisting the Court to reach the logical conclusion.

11. The vehicle under question has been already released. The question that now remains for consideration is whether the authorities

below, in the present case, have adhered to the spirit of Section 4 of the MPID Act.

12. As noted above, Section 4, which has overriding effect, is meant for immediate action at the hands of the Collector to protect the interest of the depositors by conducting enquiry upon a complaint received from the depositors and then sending report to the Government, at the earliest so that the money and other properties acquired by the financial establishments could be attached. Bare perusal of Section 4 indicates that the enquiry by Collector is independent of investigation that would be carried out by the investigating agency. In that sense, if the report is lodged with police station, the Investigating Officer should forthwith transmit the copy of First Information Report along with documents received till then to the Collector of the District for taking action in terms of Section 4 of the MPID Act.

13. In the present case, it appears that the Collector has not conducted any enquiry. What has been done is that the report prepared by the investigating agency has been forwarded to the Collector in August, 2022. The Collector has forwarded the report to the State Government on 27-6-2023 i.e. after about ten months. The State

Government has not issued notification of attachment of property. Thus *prima facie* it appears that in the present case, the purpose of enquiry envisaged under Section 4 of the MPID Act has been frustrated. The State Government shall forthwith take appropriate steps and in future, shall comply with the provisions of the MPID Act, considering its purpose as noted above.

14. With the above observations, the proceedings stand disposed of.

15. Copy of order be served upon the State Government, through the Collector and D.I.G., State of Maharashtra, for compliance.

(Anil L. Pansare, J.)

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