IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 723 OF 2023

Sarbashish Basu
Indian Inhabitant, Age – 30 years,
Occupation – Account Executive,
Residing at 83/1, 4th floor, Bidhan Sarani,
Kolkata – 700004. …. Appellant
(Original accused No.1)

V/s.

1) The State of Maharashtra
(Through Senior Inspector of Police
Malad Police Station, Mumbai).

2) Ramkrishna Sundaram
Age : 48 years, Occupation : Employed,
Residing at: Flat No.402, Athena Co-op.
Housing Society, Chincholi Bunder,
Malad (West), Mumbai - 400 064. …. Respondents

WITH
CRIMINAL APPEAL NO. 724 OF 2023

Adhiraj Singh
Indian Inhabitant, Age – 29 years,
Occupation – Account Executive,
Residing at 45, Rafi Ahmed Kidwai Road,
Kolkata – 700016. …. Appellant
(Original accused No.2)

V/s.

1) The State of Maharashtra
(Through Senior Inspector of Police
Malad Police Station, Mumbai).

2) Ramkrishna Sundaram
Age : 48 years, Occupation : Employed,
Residing at: Flat No.402, Athena Co-op.
Housing Society, Chincholi Bunder,
Malad (West), Mumbai - 400 064. …. Respondents

Ms. Lakshmi Raman for the Appellant in both Appeals.
Mr. Shreekant Gavand, APP for the State.
Mr. Sanjeev Kadam i/b. Kadam and Co. for Respondent No.2.
Mr. Pratap Bandgar, PSI, Malad Police Station, present.

CORAM: A.S. GADKARI AND SHYAM C. CHANDAK, JJ.

RESERVED ON : 18th JANUARY, 2024
PRONOUNCED ON : 22nd MARCH, 2024

JUDGMENT [PER : SHYAM C. CHANDAK, J.] :-

1) Present appeals are filed under Section 11 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as 'the MPID Act'). Appellant-Sarbashish Basu is original accused no.1 and Appellant-Adhiraj Singh is original accused no.2 in M.P.I.D. Special Case No.700 of 2022, pending before a Designated Judge, Special MPID Court, Greater Bombay, Mumbai, arising out of F.I.R. bearing C.R.No.611/2021 dated 26th June, 2021 registered with Malad Police Station, Mumbai, for offences punishable under Sections 406, 409, 420 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the MPID Act. (*Hereinafter, the Appellants are referred to as they are arrayed in the chargesheet i.e. accused nos.1 and 2 respectively*).

1.1) Criminal Appeal No.723/2023 is directed against an Order dated 06th February, 2023 and Criminal Appeal No.724/2023 is directed against an Order dated 14th February 2023, whereby Discharge Application filed by accused nos.1 and 2, at Exh.-3 and Exh.-4 respectively, in said M.P.I.D. Special Case No.700/2022, have been rejected.

2) Heard Ms. Lakshmi Raman, learned Advocate for Appellants, Mr. Gavand, learned APP for Respondent no.1-State and Mr. Sanjeev Kadam, learned counsel for Respondent no.2. Perused the record.

3) Facts giving rise to these Appeals are as under :-

3.1) That, Minance Group of Companies, Bangalore is comprised of three companies viz. i) Minance Technologies Pvt. Limited (for short '*MTPL*'), ii) Minance Investment Advisors Pvt. Limited (for short '*MIAPL*'), and iii) Minance Resources Pvt. Limited (for short '*MRPL*'). Mr. Anuraj Bhatia, is Director of the said Company.

3.2) In the month of October/November, 2016, accused No.2 (Adhiraj Singh) and wanted accused persons Mr. Parth Kushwaha and Mr.Anurag Bhatia, contacted Respondent No.2 on phone on behalf of their group of companies and they also met with him personally, at Mumbai. During the telephonic talk and personal meetings, they impressed upon Respondent no.2 that, MTPL is a registered sub-broker of Angel Broking Ltd. and MIAPL is registered with SEBI as an Investment Advisor. Further, they told the Respondent no.2 that, in case he invests through their companies, he would get very good returns and requested him to invest as above. They also showed him the information of the companies on website. Then they induced Respondent no.2 to create a portfolio and invest money through MTPL with an assurance of good profit. The Respondent no.2 confirmed the veracity of sub-brokership of MTPL from website. As the Respondent No.2 had trust about SEBI, Angel Broking Ltd. and as the companies namely MTPL and MIAPL were affiliated to Angel Broking Limited and SEBI respectively, the Respondent No.2 and his wife Smt. Deepa decided to invest in the aforesaid two companies.

3.3) On 20th January 2017, Demat Account No.1203320011180663 and Trading Account No.D56800 were opened with Angel Broking Ltd. in the joint name of Respondent No.2 and his wife at the instance of Mr. Parth Kushwaha. In turn, Respondent No.2 transferred Rs.25 Lacs from time to time in the aforesaid accounts with Angel Broking Limited on instructions of Anurag Bhatia. Anurag Bhatia and accused no.2 used to trade from the aforesaid Trading Account of Respondent no.2 and he used to receive e-mails to that effect from them. In the month of February 2017, Minance Company executed Investment Partnership Agreement with Respondent No.2/his wife. Thereafter, pursuant to e-mail dated 16th March 2017 from Parth Kushwaha, Respondent No.2 transferred Rs.67 Lacs to the bank account No.9912354553 of MTPL held with Kotak Mahindra Bank, over the period from 17th March 2017 to 27th September, 2018. As per the information received on e-mail from the accused persons, they traded in HFT product and the Maturity Value of investment of Respondent no.2 was Rs.94,25,000/- as on March, 2019.

3.4) In July 2019, Respondent No.2 asked for withdrawal of the maturity of his investment from MTPL. In turn, he was given various cheques towards withdrawal of his investment of Rs.94 Lacs. However, said cheques dishonoured when presented for encashment. On constant persuasion with the office of the company, at Bengaluru during the period between 14 August 2019 to 24 February 2020, the company returned Rs.23 Lacs only. During further inquiry, Respondent No.2 came to know from Angel Broking Company that, it had already terminated the sub-brokership of MTPL on 24th April 2019, due to several complaints against the said company. Thus, all the accused persons cheated to Respondent No.2, therefore, he lodged the F.I.R. with Malad Police Station, hence Police registered this crime against both the Appellants, Mr. Anurag Bhatia and Mr. Parth Kushwaha. On completion of investigation, police submitted chargesheet against the Appellants. Mr. Anurag Bhatia and Mr. Parth Kushwaha have been shown as wanted accused therein.

4) Learned Advocate for the Appellants submitted that, insofar as accused No.1 is concerned, he was only an employee of MPTL at the time of alleged investment. Subsequently, accused no.1 resigned from the company. Even though accused No.1 was Director in MIAPL, he or MIAPL were not directly or indirectly involved in the alleged act of cheating. There is no wrongful gain by accused no.1 on account of the said cheating. Except developing technological capabilities of the company and maintaining good

investor and client relations, no other role is played by accused no.1 in the alleged offence. The allegations against accused no.1 are general in nature. As such, there is no *prima facie* case against accused no.1 and he is innocent. However, the aforesaid facts are not considered by the learned Judge of the trial Court, therefore, rejection of the Discharge Application of accused no.1 is erroneous.

4.1) As regards accused no.2, learned Advocate submitted that, all the investments at MTPL were exclusively managed and overseen by wanted accused nos.1, 2 and their team. Accused no.2 was completely unaware of the illegal and fraudulent activities undertaken by wanted accused no.1 for the sake of this crime. The wanted accused persons were not under the supervision of accused no.2. This fact was confirmed by wanted accused no.1 on several occasions *via* his e-mail to the investors. It is submitted that, there is no material in the charge-sheet showing any dishonest intention on the part of accused no.2 which was sufficient to constitute the offence of cheating etc. Thus, accused no.2 is innocent. Yet, the aforesaid facts are not considered by the learned Judge of the trial Court, therefore, rejection of the Discharge Application of accused no.2 is also erroneous.

5) In reply, learned APP submitted that, since before investment, accused no.2 and both the wanted accused persons had contacted with Respondent No.2 on phone/personally and induced him to invest money

through their companies by giving allurement of higher returns. After the investment, the accused persons falsely shown that, they have traded in the Demat Account of Respondent no.2. Thereafter, when Respondent No.2 wanted to redeem his investment along with profits *i.e.*, Rs.94 Lacs, the accused persons did not pay him that entire amount but only paid Rs.23 Lacs. Thereafter, all the accused persons avoided to pay the balance amount by giving false pretexts. Thus, since inception the accused persons wanted to cheat Respondent No.2. Therefore, the Appellants and wanted accused persons deceived the Respondent No.2 and dishonestly induced him to invest his money in their company by giving false assurance of good returns and without any intention to return the maturity amount. Accused no.1 has provided all the technical and non-technical support in the said criminal act. Thus, there is *prima facie* case against both the Appellants.

6) In view of the rival submissions, we have carefully considered the record. Insofar as accused no.2 is concerned, the F.I.R. specifically recorded that, he along with both the wanted accused persons gave Respondent No.2 an allurement of higher returns against his investment through their companies -MTPL and MIAPL. Even though MTPL was not associated with SEBI, they claimed to contrary. Thereafter, the accused persons caused the Respondent no.2 to deposit Rs.67 Lacs in the bank account of MTPL, which was not permissible as per the SEBI Rules/Guidelines. Further, the accused persons falsely informed the

Respondent no.2 that, the maturity amount of his investment is Rs.94 Lacs. However, when Respondent No.2 wanted his investment back along with the profits, all the accused persons returned him Rs.23 Lacs only and avoided to pay the balance amount. Meanwhile, various cheques drawn in favour of Respondent no.2 by the accused persons dishonoured. Accused no.2 failed to inform as to why his company could not return the entire investment of Respondent no.2 alongwith the profits. The record indicates that, MTPL has provided the services of portfolio manager without a certificate of registration by SEBI and since 2017, collected Rs.64,70,15,194/- as fees. The accused persons did not trade in the Demat account of Respondent no.2 opened with Angel Broking Company

7) Record indicates that, accused no.1 was an employee of MTPL and Director in MIAPL when Respondent no.2 was induced to invest and he actually invested his money. MTPL Co. was share holder of MIAPL. Accused no.1 was instrumental in making strategic decisions for MIAPL and was also responsible for the overall marketing and investor relations for the company. Considering the text of the F.I.R. it is apparently clear that, MIAPL was purposely introduced to Respondent no.2 to convince him that, his investment will be through MIAPL as it was an investment advisor. Accused no.1 has not explained as to why he allowed the other accused persons to introduce his Co. MIAPL to Respondent no.2 for the sake of investment. As contended by the Respondents, some big amount is transferred from the

bank account of accused no.2 to the bank account of Minance Finance Company and other companies. All this indicate that, accused no.1 deliberately allowed the other accused persons to deal with Respondent no.2 on his behalf and on behalf of MIAPL and induced him to invest his money as above but without any intention to return its maturity value.

8) As such there is sufficient material to attract the offences punishable under Sections 406, 409, 420 r/w. 34 of the I.P.C. Since, the accused persons received the monetary investment in the name of MTPL and MIAPL, it is sufficient to attract the offences under Sections 3 and 4 of the MPID Act. In view of the above, we are of the considered opinion that, there is *prima facie* sufficient material available against the Appellants to show their involvement in the present crime and to proceed to frame charge against them.

8.1) In view thereof, there is no substance in the Appeals and the same are liable to be dismissed and are accordingly dismissed.

(SHYAM C. CHANDAK, J.) **(A.S. GADKARI, J.)**

PREETI HEERO JAYANI

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