

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 951 OF 2024
WITH
INTERIM APPLICATION NO. 3497 OF 2024

Pagoda Forest Limited Through
Its Director Bijoy Kumar Gupta .. Appellant

Versus

State Of Maharashtra And Ors. .. Respondents

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Mr. Satish Muley a/w Mr. Mosin Naik, for the Appellant.
Ms. S. S. Kaushik, A.P.P. for the State/Respondent.
Mr. Sharad Gare, P.I., E.O.W., Unit-8, Mumbai, is present.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 12th NOVEMBER, 2024

P.C:-

1. The present Appeal is filed by the Appellant, Pagoda Forest Limited being aggrieved by the order passed by the Designated Court under the MPID Act on 07.08.2024, in Misc. Application No. 995 of 2024 in MPID Special Case No. 3 of 2005.

The learned counsel who has filed an application on behalf of Pagoda Forest Limited through one of its Director, specifically urged before us that the company as such is not

arraigned as accused in the MPID Special Case and the three accused were the Directors of the Company and therefore the direction issued against the Respondent Nos.1 and 2 the Directors, to publish in all leading newspaper that the investors of Pagoda Forest Limited shall register their names in the list of investors prepared by them, as it is alleged that thousands of investors were duped and a directions issued to them to furnish the list of investors is called in question.

2. During the pendency of the Appeal, it is informed by the learned counsel that the MPID Special Case No.3 of 2005 itself is decided by Judgment dated 11.10.2024 passed by the Designated Court under the MPID Act, 1999, and by this Judgment, the three accused persons, the Directors of the Company are acquitted for the offences punishable under Section 406, 420 read with Section 120-B of the IPC as well as under Section 3 of the MPID Act, 1999.

The order also record that other incidental proceedings are civil in nature, if pending shall be continued notwithstanding the conclusion of the present trial against accused Nos.1 and 3. The Designated Judge has once again reiterated the direction to the Competent Authority to issue publication in leading newspapers calling upon the investors to claim their investment amount.

3. When we have perused the Judgment, we find that on the basis of the evidence adduced before the Court, the learned Judge has specifically observed thus :

“64. The mode of deposit have not been stated by prosecution witnesses in their evidence. Further, the mode of deposits has not been stated in the certificate alleged to have been issued by Pagoda Forests Ltd. acknowledging deposits from investors. Further, depositors have not stated from which source, they have generated money for bank transfer as deposits with Pagoda Forests Ltd. as investment. In absence of deposit being landed in the Company's bank account or in the bank account of Directors, no incriminating liability can be fixed on Company or it's Directors regarding deposit being entrusted to them as investment. Further, there is no material to show that depositors were cheated since inception with sole intention to deceive them of their valuable money. There is nothing on record that by deceiving investors, Directors Bijoykumar Gupta, Pushpa Gupta and Hemantkumar Mahale had gained wrongfully, since deposit of money with Pagoda Forests Ltd. has not been established. Further, there is no proof regarding deposits being transferred into bank account of Pagoda Forests Ltd., and it's Directors. Therefore, question of committing fraudulent default by Financial Institution i.e. Pagoda Forests Ltd. does not arise.”

In light of the aforesaid finding a question is when the prosecution has failed to discharge the burden that an offence under Sections 406 and 420 read with Section 120-B of the IPC and under Section 3 of the MPID Act, is not made out, whether the civil proceedings shall still continue as a conclusion is rendered by the learned Judge that the question of committing fraudulent default by the financial institution i.e. Pagoda Forest Limited does not arise, necessarily, indicating that an offence punishable under Section 3 of the

MPID Act is not made out.

4. In the wake of the above, we deem it appropriate for the Appellant to seek disposal of the pending Misc. Application before the Special Court and we expect the Special Judge to decide the said Application in the light of observations in the Judgment dated 11.10.2024 thereby acquitting the Directors of the Company with the specific observation to the effect that no offence is made out against them or against the company.

With these directions, the present Appeal is disposed off.

5. Needless to state that upon appropriate application being filed by the company, the learned Judge shall pass orders in an expeditious manner, as the property of the Company is already under attachment.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)