IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.72 of 2025

Mr. Dayendra Umakant Patil … Appellant
V/s.
The State of Maharashtra and anr. … Respondents.

Mr. Pravin U. Gaikwad a/w. Shahrukh Siraj Shaikh for the Appellant.
Mr. Arfan Sait, APP for the State.
Mr. Sachin Suryawanshi, PI, Unit Gut-3, EOW, Mumbai present.

CORAM : SARANG V. KOTWAL & S.M. MODAK, JJ.

DATE : 27 January 2025.

P.C. :

This is an appeal under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 (for short 'MPID Act') challenging the order passed by the Designated Judge under MPID Act, City Civil & Sessions Court, Greater Bombay on 10th December 2024 below Exhibit 49 in MPID Special Case No.11/2015. The said application was preferred for discharge under Section 227 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). The Appellant is facing the charges under Section 420 read with Section 34 of Indian Penal Code (for short 'IPC') and under Section 3 of the MPID Act.

2. The prosecution case as reflected in the charge-sheet is as follows:

The FIR was lodged by one Mukesh Gamre on 5th January 2010. In September 2009 the Appellant made a telephonic call to the first informant and told him that his company had started some schemes. He gave the address of his office at Dadar. The main office of the company was at Hyderabad. One Mahesh Bhupati was a Director of the said company by name Swastik Innovative Multitrade Services. The Appellant was looking after the office at Dadar. When the informant approached the Appellant, he was told by the Appellant that if cash amount is invested in their company, the informant would get 1% or 2% everyday on the investment and the original investment would be returned within 300 days. The informant placed trust on his inducement. He again went to the Appellant's office. The informant invested Rs.5000/- and on the next occasion invested Rs.10,000/-. The money was deposited in the name of Share-in-Trade Company through a website. The Appellant gave him a receipt. But thereafter the informant did not get any return on his investment. The office was shut. The informant and other investors went to Hyderabad. They came to know that the company was closed and a case was registered against Mahesh Bhupati and that he was arrested. On this basis, FIR was lodged vide C.R. No.62/2010 on 2nd March 2010 at Shivaji Park police station under Sections 420 read with Section 34. The investigation was carried out and charge-sheet was filed. According to learned APP, the provisions of MPID Act were applied on 6th January 2015. The charge-sheet elaborated the *modus operandi*. It is mentioned in the charge-sheet that the Appellant induced the investors for investing in their schemes. The investors were also induced to get other investors promising them commission on the same. To win their trust the Appellant showed them the investment certificate in the name of Dinesh Dalvi given by Swastik Innovative Multitrade Services mentioning that the Appellant was selected as Zonal Franchise of the said company. The Appellant also showed various post dated cheques given to some investors. The Appellant himself used to give post dated cheques from the company's account held with Axis Bank, Hyderabad. The cheques were signed by Mahesh Bhupati. He used to tell the investors to deposit their investment in the same account. The Appellant used to hold weekly seminars on Saturday at Dadar. One other accused Kiran Kumar used to come from Hyderabad and used to explain the scheme. On some occasions, some of the investors were taken to Hyderabad by air. Those investors met Mahesh Bhupati and Kiran Kumar. The Appellant introduced both of them to the investors. With this *modus operandi* various investments were accepted. The charge-sheet mentions that there were in all 58 investors who had invested the amount of Rs.85,25,000/- between the period from July 2009 to 26th November 2009. As a result of this investigation, the charge-sheet was filed.

3. The Appellant preferred an application for discharge below exhibit 49 in the said case which was rejected. The said order is impugned in the present appeal.

4. Learned Counsel for the Appellant made the following submissions:

The charge-sheet does not show the Appellant's involvement. The offence is committed by Mahesh Bhupati and Kiran Kumar who were concerned with the aforementioned Swastik Innovative Multitrade. The Appellant was merely a franchise holder of the said company. He has not committed any offence. He has not misappropriated any amount. Out of the three accused one has passed away and other accused Mahesh Bhupati is arrested. The Appellant as on today is on bail. The Appellant has already deposited the amount of Rs.84,28,000/- on various occasions, therefore, the amount of fraud is already secured. The main contention of the learned counsel was that the provisions of MPID Act were applied much belatedly i.e. after more than four years. He submitted that it was not open for the investigating agency to have added the provisions of MPID Act in view of Section 4(3) of MPID Act unless there was a written complaint from the Collector in that behalf. He, therefore, submitted that the entire application of MPID is vitiated. Therefore, if only the offence under Section 420 of IPC remains, it was a compoundable offence and considering the deposit made by the Appellant, he could press for compounding the offence.

5. On the other hand, the learned APP submitted that it was not the requirement of law that the Collector had to forward some complaint to the investigating officer and then only the provisions of MPID Act can be invoked. There is no bar for registration of FIR or

even for adding the provisions of MPID Act subsequently in the pending investigation. Section 4(3) of MPID Act provides procedure for attachment of the property so that property is secured at the earliest. That does not bar the investigating agency from carrying out investigation independently. It is submitted that role of the Appellant is clearly made out in the investigation. The inducement was made by the Appellant and money was collected by the Appellant.

6. We have considered these submissions and we are inclined to agree with the submissions of learned APP. From the investigation carried out it is quite clear that the inducement was made by the Appellant, the money was received by him and at his instance, the investors had deposited their investment amount in the bank account. The details of the account was provided by the Appellant. The post dated cheques signed by Mahesh Bhupati were handed over by the Appellant. He used to arrange weekly seminars. He had taken some of the investors to Hyderabad. Therefore, his role in the entire offence is made out.

7. As far as the submission that the police could not have added the provisions of MPID Act is concerned, we do not agree with the submissions of learned counsel for the Appellant. Sub-Section 3 of Section 4 nowhere mentions that it was the only mode available to the investigating agency to apply the provisions of MPID Act and initiate an investigation. Section 4(3) of the MPID Act reads thus:

> "4(3)- The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation."

Basically, Section-4 of MPID Act is for the purpose of attachment of properties on default to return of deposits. Sub-Section (3) provides that the District Collector was competent to receive the complaints from his district under sub-section (3) of Section 4 and he was enjoined the duty to forward the complaints with his report to the Government at the earliest and he is also required to send copy of the complaint to the concerned District Police Superintendent or Commissioner of Police as the case may be for investigation. This pre-supposes that the Collector receives some complaint in that behalf but if the complaint is not received by the Collector, then obviously it is not a requirement that police have to wait for some communication from the Collector to initiate the proceedings under MPID Act. Sub-section (3) of Section-4 provides for procedure so that not only the property can be attached under Section 4 but even the investigation can commence, if so required on the basis of the complaints received by the Collector and forwarded to the Superintendent of Police or the Commissioner of Police as the case may be. That does not stop any investor to approach the police station directly and make a grievance about his loss or make accusations in respect of the offence under MPID Act.

8. In view of this discussion, we do not find any infirmity in the impugned order passed by the learned Designated Judge under MPID Act. He has given sufficiently cogent reasons on all his aspects. We do not find any reason to interfere with his order. The deposit of Rs.84,28,000/- will not wipe out the offence which is already committed.

9. In this view of the matter, no relief can be granted to the Appellant and the appeal is dismissed.

(S.M. MODAK, J.) **(SARANG V. KOTWAL,J)**