

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 118 OF 2025

Dr. Anuj Jagdish Saxena

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Dinesh Dubey a/w. Rohit Pandey a/w. Pranay Chougule for
Appellant.

Smt. M. M. Deshmukh, APP for State/Respondent.

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

DATE : 6 MARCH 2025

PC :

1. The Appellant has challenged the order dated 09.01.2025 passed below Exhibit-30 in MPID Special Case No.1300 of 2021 by the learned Designated Judge under The Maharashtra Protection of Interest of Depositors Act, 1999, for Greater Bombay. Vide the impugned order, the Appellant's discharge application was rejected. Brief background of the case as is reflected from the F.I.R. and the consequent charge-sheet is as follows:

The F.I.R. was lodged vide C.R.No.263 of 2015 on 05.09.2015 at Amboli police station, under sections 420 and 120B of the I.P.C. and U/s.3 and 4 of the The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act'). The investigation was subsequently taken over by the Economic Offences Wing (EOW) vide registering their own F.I.R. vide C.R.No.52 of 2015. The F.I.R. was lodged by one Rajiv Mehta on 05.09.2015. He has stated in his F.I.R. that, he was working as a Chartered Accountant. In February 2012, he received a phone call from a finance company. The informant was asked whether he was interested in making investment. The caller suggested that, he could invest in a couple of companies. One of them was M/s. Elder Pharmaceuticals Ltd. The informant showed his interest in investing in M/s. Elder Pharmaceuticals Ltd. (hereinafter referred to as 'the company'). The informant received forms of investment in the company. He noticed that there were two schemes of Fixed Deposit investments. It was mentioned that the company was a leading name in the pharmaceutical field and it was ranked 27 in India. The names of the persons controlling the

company were mentioned; they were Jagdish Saxena, as Managing Director and Alok Jagdish Saxena as Assistant Managing Director and there were other Executive Directors. Significantly, the appellant's name was not mentioned at that point of time. Incidentally, it can be noted that the Appellant is the son of Jagdish Saxena and the brother of Alok Saxena. The investment forms mentioned a cumulative scheme and a non cumulative scheme promising 9.50% to 14% interest with annually effective yield. The minimum investment amount was fixed at Rs.25000/-. Considering those schemes, the informant invested in the cumulative scheme. He invested Rs.5 lakhs on 16.03.2012. He was to get the promised amount of Rs.7,23,340/- on 18.03.2015. The interest per annum was Rs.12.50% p.a. and locking period was 36 months i.e. 3 years. He was given the fixed deposit receipt. Before the investment period was to get over, he received an information that the company was not returning investments to other investors and some litigation was pending before the Company Law Board. The informant made an application for including his name in that litigation, but there was no response. He did not receive back his

investment. He contacted the company in March 2015, but he was told that, it was not possible to give back his investment and the promised returns. The F.I.R. thereafter mentions the name of the present Appellant describing him as the Chief Operating Officer of the company. It is the informant's case that, there was no progress and he did not receive his amount. There were many such investors. The F.I.R. mentions that there were more than 400 investors who were induced into investing in the company for the promised returns at the interest of 12.50% to 14.00%. The F.I.R. mentions that the misappropriated amount of the company was more than Rs.5 crores. On these allegations the F.I.R. was lodged. The investigation was carried out and the charge-sheet as filed.

2. The charge-sheet contains further details and according to the investigating agency, till the time of filing of the charge-sheet, there were about 23941 investors and the amount of investment was Rs.155,28,67,770/-. About 760 complaints were received by the EOW and the amount involved in those complaints which was misappropriated was to the tune of Rs.9,13,90,000/-. The role attributed to the Appellant was that, he had entered into

a correspondence with the investors in his capacity as the Chief Operating Officer, but he had not returned the investment. The charge-sheet mentions that he was the Managing Director of M/s. Elder Healthcare Ltd. Which was a sister concern of the company (i.e. M/s. Elder Pharmaceuticals Ltd.). The investigation revealed that, from the account of the company (M/s. Elder Pharmaceuticals Ltd.) maintained with the Kotak Mahindra Bank, amount of Rs.1,41,00,000/- was transferred in the account of M/s. Elder Healthcare Ltd. These are the basic allegations against the present Appellant.

3. Learned counsel for the Appellant made the following submissions:

The Appellant had joined the company M/s. Elder Pharmaceuticals Ltd. as Chief Operating Officer on 21.08.2014. Learned counsel submitted that, after that particular date, there is not a single investment received by the company. The correspondence which is referred to by investigating agency in the charge-sheet is only a letter dated 05.03.2015 sent by the

Appellant mentioning pendency of the litigation and expressing regret for the inconvenience caused and assuring the investors of the company's endeavour to resolve the issue at the earliest. He submitted that the said letter in no way mentions that he had promised to return the investment and the interest to the investors. Therefore, that letter is innocuous and cannot be held as incriminating piece of evidence against the Appellant. He submitted that, M/s. Elder Healthcare Ltd. is an independent entity. That company is not made as an accused in the charge-sheet filed in this case. He submitted that, unless that company is made as an accused, the Appellant who was the Managing Director of that particular company, to whose benefit the transaction of more than Rs.1 crore had taken place in the past; the Appellant cannot be made as an accused in the present case.

4. In support of his contention, learned counsel relied on the observations of the Hon'ble Supreme Court in the case of **Sunil Bharti Mittal Versus Central Bureau of Investigation**¹ and on the ratio in the Judgment of the Hon'ble Supreme Court in the case of

1 (2015) 4 Supreme Court Cases 609

***Sharad Kumar Sanghi Versus Sangita Rane*².**

5. As against these submissions, learned APP relied on the bank entry dated 05.07.2013 in respect of the account maintained with the Kotak Mahindra Bank by the company; showing transfer of amount of Rs.1 crore to M/s. Elder Healthcare Ltd. She submitted that, thus, there is a direct nexus between the two companies and the money trail has led to the said company. She submitted that the Appellant was the Chief Operating Officer of the accused company i.e. M/s. Elder Pharmaceuticals Ltd., therefore, his role is clearly established. She further submitted that the investigation U/s.173(8) of the Cr.PC is still going on and still many more complaints are being received by the EOW.

6. We have considered these submissions. The main crux of the argument of the learned counsel for the Appellant was that the Appellant was appointed as the Chief Operating Officer in M/s.Elder Pharmaceuticals Ltd. on 21.08.2014 and from that point onwards no investments were received by the said company at all. The date of promised return was much beyond 21.08.2014 and,

2 (2015) 12 Supreme Court Cases 781

therefore, it was the responsibility of the person who was in control of the company to see to it that the returns were made as promised. The scheme that was initiated, itself was not viable because of the exorbitant rates quoted in the scheme. Therefore, there is scope to believe that right from the beginning it was clear that the scheme was not going to be successful and that it was a fraudulent scheme.

7. Section 3 of the MPID Act reads thus:

Section 3 - Fraudulent default by Financial Establishment

Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or- affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Explanation.- For the purpose of this Section, a Financial Establishment, which commits defaults in repayment of such deposit with such benefits in the form of interest, bonus, profit or any other form as promised or fails to render any specified service

promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of deposits in such a manner as it involves inherent risk in recovering the same when needed shall be deemed to have committed a default Or failed to render the specific service, fraudulently.

8. In this context, it is quite clear that every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or- affairs of such Financial Establishment could be prosecuted. The Appellant definitely falls in this category. He was directly in control of the main accused company M/s. Elder Pharmaceuticals Ltd. Besides this, there is a serious material in the form of transfer of Rs.1 crore on 05.07.2013 from M/s. Elder Pharmaceuticals Ltd. to M/s. Elder Healthcare Ltd. The submission of the learned counsel was that, unless the company M/s. Elder Healthcare Ltd. was made as an accused, the Appellant could not be made as an accused in this case. As on today, M/s. Elder Healthcare Ltd. is not made as an

accused. In that context, he had relied on the observations of the Hon'ble Supreme Court in the aforesaid two judgments of **Sunil Mittal (supra)** and **Sharad Sanghi (supra)**.

9. The Hon'ble Supreme Court in the case of Sunil Mittal (supra) has observed that an individual who had perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent.

10. The observations of the Hon'ble Supreme Court in the case of Sharad Sanghi (supra) are that, when the company had not been arraigned as an accused, the individual accused cannot be prosecuted U/s.420 of the I.P.C. Learned counsel has relied on this ratio.

11. However, in the present case, the situation is completely different. The Appellant is not only associated with M/s. Elder Healthcare Ltd., but he was Chief Operating Officer of the main accused company M/s. Elder Pharmaceuticals Ltd. The said company is an accused in this case. He was directly in control of

the said company. Therefore, the submissions of the learned counsel, relying on the ratio of those two judgments, does not support the Appellant's case. Apart from that, the money trail shows that the amount of Rs.1 crore was transferred from M/s. Elder Pharmaceuticals Ltd. to M/s. Elder Healthcare Ltd. It is clear that this money trail was from the investors' money to the account of the sister concern of the main accused company and that sister concern was controlled by the Appellant as the Managing Director. As mentioned earlier, at that point of time, the father and the brother of the Appellant were in charge of the main accused company i.e. M/s. Elder Pharmaceuticals Ltd. This shows that, there is clear connection between the present Appellant and other accused, as well as, both these companies.

12. The learned Designated Judge while rejecting the Applicant's application for discharge has considered all these aspects in their proper perspective. Therefore, there is no reason made out to interfere with the impugned order. There is sufficient material against the Appellant for framing of the charges. Therefore, no relief can be granted to the Appellant in this case.

13. The Appeal is accordingly dismissed.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)