

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

CRIMINAL APPEAL NO. 350 OF 2025

Smt. Neelam Rajendra Nanaware.

Age : 58 yrs..

R/at Flat No. A/302-303,

New Kalparaj Apartment,

Vallipir Road, Opp. Zozwala Petrol Pump,

Bailbazar, Kalyan, Thane 421301.

... Appellant.

Versus

The State of Maharashtra.

(Through EOW Mumbai).

... Respondent.

Mr. Chaitanya Pendse, Advocate for the Appellant.

Mr. Vinod S. Chate, APP for Respondent/State.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 25th APRIL, 2025
PRONOUNCED ON : 2nd MAY, 2025.**

JUDGMENT : (PER ASHWIN D. BHOBE, J)

1. Heard Mr. Chaitanya Pendse, Advocate for the Appellant and Mr. Vinod S. Chate, learned APP for the Respondent State.

2. Admit. By consent of parties matter taken up for final hearing.

3. By the present appeal filed under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial

Establishment) Act, 1999 (for short “**MPID Act**”), Appellant assails the order dated 20.03.2025 (for short “**impugned order**”), passed by the Designated Court under MPID Act, City Civil and Sessions Court, Mumbai (for short “**Trial Court**”), by which the Trial Court has dismissed the application dated 15.01.2025 (Exh. 35) filed by the Appellant under Section 227 of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”), seeking discharge in MIPD Special Case No. 23/2020 from offences charged under section 406, 420, r/w section 34 of the Indian Penal Code, 1860 (for short “**IPC**”), Section 3 and Section 4 of the MPID Act.

Case of the Prosecution:-

4. Mr. Rajendra Pawar, Mr. Prakash Dighe, Mr. Setu Nair and Mr. Mahesh Kedari (Accused Nos. 1 to 4), Directors of M/s SOAR System Private Limited (for short “**the Company**”), were introduced to the Complainant Mr. Sandeep Ramchandra Rane, by the agent of the Company by name Shweta Ghadigaonkar, who explained to the Complainant about the hosiery scheme of the Company. According to the Directors of the Company if money was invested in the said hosiery scheme, investors would earn five times of the invested amounts, within a period of six weeks. Complainant inspired by the said representations,

on 16.02.2002, invested Rs. 30,000/- in the said scheme of the Company. A total of 181 investors invested an amount of Rs. 62,14,040/- in the said hosiery scheme of the Company. Directors of the Company failed and neglected to return, the promised returns as agreed on the deposits. Investors were duped by the Company and its Directors, by playing fraud upon the investors. On report of the Complainant Mr. Sandeep Ramchandra Rane, the Respondent, registered Crime No. 44/2004 under Section 406, 420, 34 of the IPC r/w Section 3 and 4 of the MPID Act against the Directors Mr. Rajendra Pawar, Mr. Prakash Dighe, Mr. Setu Nair, Mr. Mahesh Kedar, Additional Director the Appellant herein and the Beneficiary Mrs. Saumini Setu Nair.

5. Charge-sheet was filed before the Trial Court on 19.08.2005, which is almost 20 years ago, and the same is registered as Special Case No. 23 of 2005. Appellant is arrayed as Accused No. 5.

6. In the year 2006, Appellant filed Criminal Writ Petition No. 1170 of 2006, before this Court seeking quashing of FIR bearing Crime No. 44 of 2004. Said Criminal Writ Petition was withdrawn by the Appellant with liberty to avail appropriate remedy as available in law.

7. Prosecution submitted Draft-charge in Special Case No. 23 of 2005, before the Trial Court on 09.09.2024. Prosecution proposed

three charges, which are extracted herein below :

“Firstly : That the accused at Mumbai, namely 1) Setu Padmanabhan Nair (Expired) (Director) 2) Prakash Narayan Dighe (Director), (3) Rajendra Yashwant Nanavare (Director), (4) Mahesh Shantaram Kedari (Director), at the office of M/s. Sour System Pvt. Ltd situated at 8, Maryland Corner, Near Eastern Express High, Near Yogi Restaurant, Sion (E), Mumbai – 22 during November 2001 to December 2002, in furtherance of their common intention to cheat the members of public (i.e. the complainant and other witnesses) did, fraudulently and dishonestly, make false representations about their schemes, and false promises to pay double money in six months with assurance to return the money as and when required as well and induced the complainant and 160 other witnesses to part with their money amounting to Rs. 62,14,040/- and subsequently they caused wrongful loss to complainant & others and made wrongful gain to themselves by committing defaulting in repayment as assured and thus they committed an offence of cheating punishable U/Sec. 420 r/w. 34 I.P.C.

Secondly : That the accused mentioned at Sr. No. 1 to 4 as a Director and Sr. No. 5 as Addl. Director and accused No. 6 as beneficiary above at aforesaid period and place being entrusted with sum of Rs. 62,14,040/- as deposits, for repaying the same after six months in double, did in furtherance of their common intention, dishonestly, commit criminal breach of trust in respect of the money collected by the company from complainant and others by utilizing the money for their own use and defaulting in repayment of receipt amount either on demand or on maturity, and committed an offence of Criminal Breach of Trust punishable u/s 406, r/w 34 IPC.

Thirdly : That the accused mentioned at Sr. No. 1 to 4 mentioned above at aforesaid period and place,

dishonestly and fraudulently, without obtaining permission from Reserve Bank of India to carry on Non Banking Finance Companies (NBFC) business, accepted deposits of Rs. 62,14,040/- from the complainant and witnesses with promise to repay double money in six months but subsequently committed fraudulent default in repayment and thereby committed an offence punishable U/Sec. 3 of Maharashtra Protection of Interest (In Financial Establishments) of Depositors Act, 1999.”

8. Appellant filed application dated 15.01.2025 (Exh. 35) in Special Case No. 23 of 2005, before the Trial Court, by invoking section 227 of the Cr.P.C., seeking discharge from the offences registered against the Appellant under section 406, 420 of IPC and Section 3 of the MPID Act.

9. By the impugned order, the Trial Court has rejected the application dated 15.01.2025 at Exh. 35. The Trial Court has arrived at the following conclusion :

“6. Perusal of reply of prosecution specifically states that, movable property came to be purchased in the name of the applicant out of deposit money collected by accused Company. Applicant being/ additional director, the movable property came to be purchased in her name in the said capacity. At this stage, it could not be believed that, applicant / accused had no knowledge about the source of money for purchase of vehicle in her name. She was additional director during the

period of crime. She is beneficiary of the proceed of crime generated from accepting deposit of investors who were defrauded of their valuable money. Thus, prima facie case is made out under Section 3 and 4 of MPID Act. Application as framed and filed is meritless and liable to be rejected.”

10. Appellant questions the impugned order on the grounds raised in the memo of appeal.

11. Respondent has filed affidavit dated 25.04.2025 opposing the appeal. Respondent in its reply reiterate the allegations made in the Charge-sheet. It is the contention of the Respondent that the Appellant is the wife of Accused No. 1 and the Additional Director of the Company, who has purchased motor vehicle in her name, out of the funds of the Company i.e. the amounts received as deposits from the Complainant/s. Appellant having purchased the vehicle in her personal name is the beneficiary of the depositors money. According to the Respondent, at this stage, the contention of the Appellant of not being aware of the source of money for purchase of the vehicle cannot be believed. During the pendency of the Special Case No. 23 of 2005 non-bailable warrants were issued against the Appellant, she having failed to attend the Court. Application seeking discharge has been filed by the Appellant after 21 years, intent being to avoid the trial. Prima facie case is made out under

section 3 and 4 of the MPID Act and that the impugned order warrants no interference.

Submissions:-

12. Mr. Chaitanya Pendse learned Advocate for the Appellant has canvassed following arguments :

(a) Allegations in the draft - charge submitted by the prosecution in the year 2024, relate to representations as well as promises and acceptance of money, as against the Directors of the Company i.e. Accused nos. to 4. No role is attributed to the Appellant/ Accused no. 5 in connection with the commission of offense.

(b) Appellant, was appointed as the Additional Director of the Company on 09.05.2002. According to the case of the prosecution, representations which resulted in the Complainant and the other investors parting with the amount of Rs 62,14,040/-, were representations made by Accused Nos. 1 to 4. During the said period the Appellant was not the Director of the Company. In view of the same, prosecution did not seek to invite charge under section 420 of IPC against the Appellant.

(c) The draft - charge does not propose any charge under section 3 of the MPID Act against the Appellant. Reason for omitting the Appellant from being prosecuted under section 3 of MPID Act is on account of the fact that the Appellant though being Additional Director of the Company, she was not responsible for the management of or for conducting of the business or affairs of the Company. Even otherwise there is no material whatsoever nature in the charge sheet suggesting the Appellant to be in control of the affairs of the Company and therefore, no case was made out against the Appellant. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of State of NCT of Delhi v/s. Rajiv Khurana¹ in support of the contention that vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises only if at the material time he / she was incharge and responsible to the company for the conduct of its business.

(d) In order to charge the Appellant under the offense punishable under section 406 of the IPC, ingredients satisfying the requirement of the said section were required to

1 2010(9) SCR 387

be shown. Respondent having failed to establish the same, the Appellant cannot be charged under section 406 of IPC.

(e) Appellant is sought to be roped in the offence on the ground of the Appellant being a beneficiary, she having applied to ICICI Bank in the capacity as an Additional Director of the Company for obtaining vehicle loan in respect of which advance payment of Rs. 1,50,274/- was paid to the authorized dealer directly from the account of the Company. Being a beneficiary, is not sufficient to invite charge under section 3 of the MPID Act, unless the statutory requirements of section 3 of MPID Act are strictly complied. No case is made out in that regard by the Respondent.

(f) Appellant being the beneficiary, the only liability which can be imposed upon such beneficiary would be to the extent of the amount which the Appellant is alleged to have benefited, to be returned by invoking provisions of Section 4 of the MPID Act. In the instant case, the Appellant had repaid the amount of Rs. 1,50,274/- by way of demand draft dated 04.08.2005 drawn in favour of the Respondent.

(e) In respect of the period from 2005 till the filing

of the application at Exh. 35 filed in the year 2025, Appellant contends that the provisions of MPID Act were struck down during the pendency of the Special Case No. 23 of 2005 which were restored subsequently by the Hon'ble Supreme Court. The proceedings/case papers of Special Case No. 23 of 2005 were misplaced by the Trial Court. The file was reconstructed only in the year 2021. Draft - charge was filed in the year 2024 and therefore, according to the Appellant there would be no delay.

13. Mr. Vinod Chate, learned APP submits that the Appellant being the Additional Director of the Company was aware of the source of money, utilized by the Appellant in purchasing the vehicle in her name and therefore, she being the beneficiary of proceeds of crime generated from accepting deposits of the investors who were defrauded of their money, *prima facie* case is made out under section 3 and 4 of MPID Act. He submits that the Appellant was dealing with financial matters of the Company, therefore responsible for the business / affairs of the Company. He further submits that standing non-bailable warrants and bailable warrants were issued to the Appellant for her non-appearance in Special Case No. 23 of 2005. He further submits that the application at Exh. 35 being filed after 21 years is a ground to dismiss

the same, as according to him, intention for the delay is to avoid trial. By relying on the impugned order, he prays that the appeal be dismissed.

14. From the rival contentions of the parties, the points for determination that fall for consideration in the present appeal are as follows :

(a) Whether records of the case and the documents submitted alongwith the charge sheet disclose sufficient ground for putting the Appellant on trial?

(b) Whether the impugned order suffers from perversity ?

15. We have perused the records. For appreciating the contentions of the parties it would be apposite to refer to the scope of exercise of power under section 227 of the Cr. P. C. as well as to the provisions of section 405 and 406 of IPC and section 3 of the MIPD Act, which are transcribed herein below :

“227 of Cr.P.C.:— Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

“405 of Cr.P.C.:— Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion

over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

406 of Cr.P.C.:- Punishment for criminal breach of trust.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

“3 of MIPD Act:- 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 liable for a fine which may extend to one lac of rupees.”

Explanation.- *For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefit 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 ou of deployment of money or assets acquired out of the 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.”

16. In the case of Ram Prakash Chadda v/s. the State of Uttar Pradesh² the Hon’ble Supreme Court, after adverting to various pronouncements, has explained the scope of Section 227 of the Code of Criminal Procedure, 1973. In paragraph nos. 16 to 25, the Hon’ble Supreme Court has observed as under :

16. We have already considered the meaning of the expression “*the record of the case and the documents submitted therewith*” relying on the decision in *Debendra Nath Padhi case* [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415] only to reassure as to what are the materials falling under the said expression and thus, available for consideration of an application filed for discharge under Section 227 Cr.PC. In the light of the same, there cannot be any doubt with respect to the position that at the stage of consideration of such an application for discharge, defence case or material, if produced at all by the accused, cannot be looked at all. Once “the record of the case and the documents submitted therewith” are before the Court they alone can be looked into for considering the application for discharge and thereafter if it considers that there is no sufficient ground for proceeding against the accused concerned then he shall be discharged after recording reasons therefor. In that regard, it is only appropriate to consider the authorities dealing with the question as

2 (2024) 10 SCC 651

to what exactly is the scope of consideration and what should be the manner of consideration while exercising such power.

17. The decision in *Yogesh v. State of Maharashtra* [*Yogesh v. State of Maharashtra*, (2008) 10 SCC 394 : (2009) 1 SCC (Cri) 51 : AIR 2008 SC 2991] this Court held that the words “*not sufficient ground for proceeding against the accused*” appearing in Section 227 CrPC, postulate exercise of judicial mind on the part of the Judge to the facts of the case revealed from the materials brought on record by the prosecution in order to determine whether a case for trial has been made out.

18. In the decision in *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] this Court held that at a stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true, and evaluate the materials to find out whether the facts taken at their face value disclose the existence of the ingredients constituting the offence. At this stage, only the probative value of the materials has to be gone into and the court is not expected to go deep into the matter to hold a mini-trial.

19. In the decision in *B.K. Sharma v. State of U.P.* [*B.K. Sharma v. State of U.P.*, 1987 SCC OnLine All 314] , the High Court of Judicature at Allahabad held that the standard of test and judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very

strong suspicion, based on the material on record, and would be sufficient to frame a charge.

20. We are in agreement with the said view taken by the High Court. At the same time, we would add that the strong suspicion in order to be sufficient to frame a charge should be based on the material brought on record by the prosecution and should not be based on supposition, suspicions and conjectures. In other words, in order to be a basis to frame charge the strong suspicion should be the one emerging from the materials on record brought by the prosecution.

21. In the decision in *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* [*Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] , this Court held that the word “ground” in Section 227 CrPC, did not mean a ground for conviction, but a ground for putting the accused on trial.

22. In *P. Vijayan v. State of Kerala* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , after extracting Section 227 CrPC, this Court in paras 10 and 11 held thus: (SCC pp. 401-402)

“10. ... If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post

office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

23. In para 13 in *P. Vijayan case* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , this Court took note of the principles enunciated earlier by this Court in *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] which reads thus: (*Prafulla Kumar Samal case* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , SCC p. 9, para 10)

“10. ... (1) That the Judge while considering the question of framing the charges under

Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence

as if he was conducting a trial.”

24. In the light of the decisions referred supra, it is thus obvious that it will within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227 CrPC, and entering into the scope of power under Section 232 CrPC, cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in *Om Parkash Sharma v. CBI* [*Om Parkash Sharma v. CBI*, (2000) 5 SCC 679 : 2000 SCC (Cri) 1014]. Taking note of the language of Section 227 CrPC, is in negative terminology and that the language in Section 232 CrPC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227 CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232 CrPC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the

prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232 CrPC, available only after taking the evidence for the prosecution and examining the accused.

25. Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in *Kaushalya Devi v. State of M.P.* [*Kaushalya Devi v. State of M.P.*, 2003 SCC OnLine MP 672] It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression “legal evidence” has to be construed only as evidence disclosing prima facie case, “*the record of the case and the documents submitted therewith*”.

[Emphasis supplied]

17. In the backdrop of the legal position emerging from the decision of the Hon’ble Supreme Court, we proceed to consider the case in hand. Case of the Prosecution in the charge-sheet filed in Special Criminal Case No. 23 of 2005 is that:- an amount of Rs. 62,14,040/- was entrusted to the Company by 181 investors; said Investors were defrauded of their valuable money; Appellant in the capacity of Additional Director, utilized the money collected by the Company from

the complainants, for her own use i.e. for the purpose of purchasing a motor vehicle in her name.

18. The language used in Section 3 of the MPID Act would indicate that “every person” which would include the Promoter, Partner, Director or any other person/employee responsible for the management or conducting of the business or affairs of such financial establishment, which has defaulted within the meaning of Section 3 of MPID Act, is held accountable and is liable to be punished, if the offence is proved. Appellant posed before the ICICI bank as being the Additional Director of the Company and obtained loan for purchasing a vehicle, in her own name. Rs. 1,50,274/- was paid for the said purpose, from the collections made by the Company from the depositors like the complainant. At the stage of framing of charge the Court is required to assess the material and documents on record and determine if there is sufficient ground to proceed against the accused. It is settled law that the Court at the stage of framing charge cannot conduct a mini trial to assess whether the offence is likely to be proved.

19. Amount entrusted to the Company by the complainants, being used by the Appellant for the purpose of purchasing a vehicle in her name, Appellant approaching the ICICI bank for a loan in her

capacity of being an Additional Director of the Company, prima facie reveals the Appellant conducting affairs of the Company and having control over the financial matters of the Company, which is sufficient ground to put the Appellant on trial. Material on record gives rise to suspicious circumstances against the Appellant, so as to frame charge against the Appellant.

20. Contentions of the Appellant of not being responsible for the Management of or conducting of the business or affairs of the Company and /or the allegations made by the prosecution of the Appellant having knowledge of the source of the money lying with the company, as also the other contentions urged in this appeal, are issues which would have to be considered in trial. Perusal of the Impugned order would indicate that the Trial Court has after consideration of the material on record, has sifted and weighed the same for a limited purpose to arrive at a conclusion that prima facie case against the Appellant is made out for framing of charge. Reasons given in the Impugned order for rejection of the application at Exh 35, warrant no interference.

21. In the case of State of NCT of Delhi (supra), the Hon'ble Supreme Court was considering the provisions of Sections 33 of Insecticides Act, 1968 which specifically mandated that whenever an

offence under the said Act was committed by a Company, every person who at the time of the offence was incharge of or was responsible to the company for the conduct of the business of the Company as well as the Company, shall be deemed to be guilty of the offence. It was in the said context that the Hon'ble Supreme Court held that the Complainant is required to state how a director who is sought to be made accused was incharge of the business of the company. There is no quarrel with the law laid down by the Hon'ble Supreme Court, however the facts and circumstances of the case in hand, more so considering the provisions of Section 3 of the MPID Act, the contentions raised by the Appellant will have to be tested during trial.

22. The learned APP has raised a contention with regards to the delay of 21 years in filing the application seeking discharge. Mr. Chaitanya Pendse, attempted to justify the delay by contending that though the charge-sheet was filed on 19.08.2005, the MPID Act in the interregnum being struck down by this Court, till the time it was restored by the Hon'ble Supreme Court, the case papers of Special Case No. 23 of 2005 were misplaced by the Court and were reconstructed in the year 2021 and the charge being filed by the Respondent in the year 2024, it would not be open for the Respondent to raise the issue of delay. We find that the said explanation of the Appellant in the facts and circumstances

of the present case is liable to be rejected for more than one reason: *firstly*, though the Appellant had approached this Court by filing Writ Petition No. 1170 of 2006 seeking quashing of the FIR, the same was withdrawn with liberty to file appropriate proceeding. No explanation is offered by the Appellant for not preferring any application for discharge immediately upon disposal of the said criminal writ petition, more so when, the charge sheet was filed on 19.08.2005. *Secondly*, even accepting the contention of the Appellant that the file of Special Case No. 23 of 2005 was missing, then in such an event, nothing prevented the Appellant from taking steps to either reconstruct the file or to file appropriate proceeding seeking a direction to the Trial Court to trace/take steps to locate the file. *Thirdly*, records placed before us by the learned APP indicates non-bailable warrants being issued for non-appearance of the Appellant before the Trial Court. All the above circumstances gives an impression that the Appellant had intention to avoid trial.

23. This Court, in the case of Nathubai Gomanbhai Patel v/s. Union Territory of Dadra and Nagar Haveli, Silvassa³ (Coram: Ravindra V. Ghuge, J) had an occasion to consider a similar situation wherein the Petitioner therein had not taken steps for almost 12 years for locating a

3 (2018) 4 Mh.L.J. (Cri.) 183.

missing file before the learned Magistrate and thereafter, approached this Court seeking discharge of the offences charged by raising of ground of right to speedy trial. Useful reference can be made to paragraph Nos. 20, 25 & 28 of the said decision:-

“20. The entire issue therefore, turns upon the conduct of the petitioner. It is quite obvious as to why the petitioner did not move the learned Magistrate after 01.09.2003 when according to him, the file went missing from the board and was said to be treated as a Dormant case file. For 12 years the petitioner has not even whispered, much less, put in efforts to make a grievance that he had a right for a speedy trial. For 12 years, neither did he move the learned Magistrate for a speedy trial, nor did he take any other step which can be said to be a bonafide act so as to seek a speedy trial. Even before this Court, in the two Criminal petitions, that he had filed, he never raised any issue of 'delayed trial' or denial of a 'speedy trial'.

25. Considering the above, though the learned advocates have been unable to explain why the file was not on board and landed in a Dormant stage for about 12 years, it is apparent that during the trial that had commenced in 2000 and even thereafter, the conduct of the petitioner as is evident from the rojnama, indicates that he consistently remained absent from 2000 to 2003 and then from 2015 onwards. He tried to delay the trial, in as much as, he did not assert his right to speedy trial (read paragraph 28 of P.Ramchandra Rao judgment).

28. Upon considering the entire facts of this case and the ratio laid down by the Hon'ble Apex Court (7 Judges) in P.Ramchandra Rao (supra), I am of the view that the law as is laid down in paragraph 27 and 28 of the said judgment

(supra) would apply to this case. Quashing the trial in this case would amount to scuttling a trial without adjudication. It would amount to giving an easy exit to the petitioner from the portals of justice.

24. In view of the above, we do not find any perversity in the said findings recorded by the Trial Court in the impugned order. The appeal is without any merit and as such is dismissed. There shall be no order as to costs.

25. As the case bearing MPID Special Case No. 23 of 2005 is pending before the Designated Court under MPID Act City Civil and Sessions Court, Mumbai, since the year 2005, we hereby direct the learned Designated Court under MPID Act City Civil and Sessions Court, Mumbai to dispose of the said proceedings expeditiously on its own merits and in accordance with law, on or before 31.10.2025. Parties to the said proceedings are directed to co-operate in the early disposal of the said case.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)