

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 179 OF 2025**

Sharvi Tulsidas Sharma

Age : 35 yrs; Occ : Freelancer,

Residing at : D 502, Royal Classics,

Behind City Mall, Andheri (W),

Mumbai-400 053

... Appellant

V/s.

The State of Maharashtra

(At the instance of Economic Offences

Wing, Mumbai)

... Respondent

Ms. Sonal V. Parab a/w Mr. Jairaj D. Sawant for the Appellant.
Mr. Vinod Chate, A.P.P. for Respondent-State.

CORAM : A. S. GADKARI AND

RANJITSINHA RAJA BHONSALE, JJ.

RESERVED ON : 29th SEPTEMBER, 2025

PRONOUNCED ON : 11th FEBRUARY, 2026

JUDGMENT (Per : A. S. GADKARI, J.) :-

1) Appellant (Original Accused No.2) has preferred this Appeal under Section 11 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 ('MPID Act'), impugning Order dated 16th December, 2024, passed below Exhibit-19 in MPID Special Case No.11 of

2017, rejecting her Application preferred under Section 227 of Criminal Procedure Code, 1973 ('Cr.PC') for discharge from the offences punishable under Sections 406, 420, 120-B, 201 of the Indian Penal Code, 1860 ('IPC') and under Section 3 of the MPID Act.

2) Heard Ms.Parab, learned Advocate for the Appellant and Mr.Chate, learned APP for the State. Perused record.

3) It is the prosecution case that, the principal accused i.e. mother of Appellant namely Mrs. Sunita T. Sharma was working in the Finance and Accounts department 'Dainik Bhaskar' group newspaper, Naman Centre, G Block, Bandra Kurla Complex, Mumbai. Mrs. Sunita Sharma used to accept deposits, invest it in forex trading and used to give good returns to the investors from the deposits accepted by her. It is alleged that, brother of Mr. Rishi Bhutani (first informant) gave him information about the said fact of his investing funds with Mrs. Sunita Sharma. The first informant and other investors therefore invested certain amounts in the investment scheme of Mrs. Sunita Sharma. Ms. Sharma, who inturn assured them to give interest on the invested amount at the rate of 15% per month. Mrs. Sunita Sharma, initially paid the aggregate interest on the invested amount however after May 2015, she stopped paying it. Mrs. Sunita Sharma with a view to gain confidence of the investors and in particular the first informant gave him post dated cheques. One of the cheque bearing No.154852 for an amount of Rs.1,25,000/- was drawn from the account of Appellant. Subsequently,

investors realized that, their invested amounts have been defalcated and they have been cheated by Mrs. Sunita Sharma, present crime is registered. During the course of investigation, the role of Appellant is revealed in the said crime. The investigation of the present crime has culminated into filing of Final Report under Section 173(2) of Criminal Procedure Code, 1973 ('Cr.P.C.') which is numbered as MPID Special Case No.11 of 2017.

4) The Appellant thereafter filed an Application below Exhibit-19, under Section 227 of Cr.P.C. for discharge from the said offences, which has been rejected by the impugned Order dated 16th December, 2024.

5) Learned Advocate for the Appellant submitted that, merely because the Appellant is the daughter of principal accused Mrs. Sharma, she has been impleaded in the present crime. She submitted that, the Appellant has no nexus in the crime alleged against her. That, the witnesses have falsely implicated her in the present crime. She submitted that, though the first informant and other witnesses have stated that, cheques were given towards security from the account of the Appellant and the same were never deposited and against the dishonor of cheques no proceedings thereof under Section 138 of the Negotiable Instruments Act, was initiated against the Appellant by the concerned witnesses. That, the Appellant was aged about 23 to 24 years when the alleged incident has taken place and therefore she was not aware of the transactions between her mother and accused persons. She submitted that, the trial Court has failed to take into consideration the

facts and has rejected her Application under Section 227 of Cr.PC. for a discharge by the impugned Order dated 16th December, 2024.

6) *Per contra*, Mr. Chate, learned APP opposed the Appeal. He submitted that, Mr. J.V. Gadekar, Police Inspector attached to EOW Wing, Unit-6, Mumbai has filed detailed Affidavit placing on record the material available against the Appellant to frame charge in the present crime. He submitted that, there is sufficient material available and annexed to the charge-sheet to proceed to frame charge against the Appellant. He submitted that, the trial Court has taken into consideration the relevant factors and has rightly rejected the Application for discharge of the Appellant.

7) Perusal of record indicates that, it is the specific case against the Appellant that, the amount received from two witnesses was deposited in her bank account and the cheques under her signatures were also issued to four depositors. That, a credit card of one witness Mr. Hitesh Chheda, was used by the original accused No.1 and the Appellant for purchase of gold ornaments from the establishment of M/s. Malabar Gold and Diamonds Shop at Andheri. During the course of investigation it is revealed that, the Appellant is the beneficiary of the amount received in investment by her mother. That, an amount of Rs.4,00,000/- invested by two witnesses were transferred in the bank account of the Appellant. As noted above, the cheques duly signed by the Appellant were issued as a security to the depositors to win over their confidence. It further appears from record that, both the accused with an

common intention have committed the aforesaid crime.

8) At this stage a useful reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Prafulla Kumar Samal, reported in AIR 1979 SC 366***. It is necessary to refer to paragraph 10 of the said judgment which reads as under :-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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 Judge cannot act merely as a Post office or a mouth-piece 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 roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.

8.1) The Supreme Court in the case of ***R.S. Nayak vs. A.R. Antulay and Anr. Reported in AIR 1986 SC 2045***, while analysing provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in Para 44 has held as under:-

“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction...." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed.”

8.2) A further reliance can also usefully be placed on the decision of the Supreme Court in the case of ***State of Maharashtra Vs. Soma Nath Thapa reported in (1996) 4 SCC 659*** wherein, the Supreme Court has held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

8.3) The Supreme Court in the case of ***Palvinder Singh Vs. Balwinder Singh and others reported in (2008) 14 SCC 504*** while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

8.4) The Supreme Court in the case of ***State of Rajasthan Vs. Ashok Kumar Kashyap (Criminal Appeal No.407 of 2021) dated 13th April, 2021***, after considering its various decisions in the field has reiterated that, at the stage of framing of the charge, it has to be seen whether or not a *prima facie* case is made out and the defence of the accused is not to be considered. That, at the stage of framing of charge and/or considering the discharge application, a mini trial is not permissible. That, the defence on merits is not

to be considered at the stage of framing of the charge and/or at the stage of discharge application.

9) It is thus settled position of law that, at the time of framing of charge and/or considering the discharge Application of the accused, the concerned Court has to take into consideration a *prima facie* case has made out by the prosecution. That, the defence of accused cannot be considered at the said stage.

10) After perusing the entire record, this Court is of the opinion that, there is sufficient material available against the Appellant to proceed to frame charge.

11) We are of the considered view that, the trial Court while passing the impugned Order dated 16th December, 2024, has taken into consideration material available on record and has not committed any error either on facts or in law while passing it.

12) Appeal, is accordingly dismissed.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)