<u>Order below Exh.52 in Special Case (MPID) No.2/2017</u>
(State Vs. Gautam)

1) The applicants original accused No.1-Gautam Vishwanath Puri and 2-Kiran Suresh Giri filed present application (Exh.52) under Section 227 of the Criminal Procedure Code to discharge them from offence punishable under Sections 420, 405, 109 r/w 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short "MPID Act).

2) On the report of informant Sultan Kalusab Shaikh Crime No.427/2016 for above said offences is registered at Shivaji Chow Police Station, Latur. The informant alleged in the report that applicant/accused No.2 and the informant were working in MS.E.B. and informant is retired from service. Accused No.2 informed the informant that his brother-in-law i.e. accused No.1 is main agent of B.N. Gold Real Estate and Allide Ltd. Latur and New Delhi (referred as Company) and if amount is invested in fixed deposit in said company, then the amount will be double within the period of six years and said period is seven to eight years in other Banks. Accused No.2 also told the informant that if amount deposit monthly amount, then company gave interest @ 12% and persuaded the informant to deposit his money received after retirement from the service in said company. The accused No.2 repeatedly persuaded him to deposit amount in said company by further giving assurances

that he will receive the benefits from time to time. Believing on him, the applicant deposited amount of Rs.9,00,000/- on different dates in different schemes through accused No.1 in his name and in name of family members. He deposited money in the office of said company situated at Barure Complex, in front of Bus Depot Ambajogai Road, Latur through accused Nos.1 and 2. He deposited said amount as both the accused assured him that he will receive all the benefits after maturity. For initial some period, he received cheque of interest amount. He also alleged that other persons have deposited amount of Rs.48,00,000/- on persuasion of accused Nos.1 and 2 in different schemes of B.N. Gold Real Estate and Allide Ltd. Latur and New Delhi. But they have not received amount as per policy on maturity. They visited the office of said company at Barure Complex, Ambajogai Road, Latur but the said office is found to be locked. They demanded money from accused No.2, but he only assured about the refund of money. Thus he alleged that accused No.2 is agent of the company and accused No.1 is main agent of company and they along with directors of the said company, induced several persons to invest money into their company by informing that they will receive more interest and double amount within less period. But did not return their amount and closed their office and thereby cheated to several persons for amount of Rs.64,85,400/-.

3) The applicants were arrested. Several material is recovered at the instance of the applicants. Statement of other investors and copies of certificates about their investment in the

company are collected by the Investigation Officer during investigation. He arrested other two accused. Directors of the company are stated to be absconding. After completion of investigation prosecution has filed chargesheet against present two applicants/accused along with other two accused for offences punishable under Sections 109, 406, 409, 420 of the Indian Penal Code and Section 3 of MPID Act by further mentioning that they have cheated for amount of Rs.16,43,45,385/- to several investors and further still investigation is going on under Section 173(8) of the Criminal Procedure Code.

4) Both the applicants filed present application to discharge them mainly on the ground that they are not directors or persons responsible for the affairs or management of above said company. The investors have not handed over any amount to them. The investors have deposited their amount in the office of the company and received receipts, certificates from the said office and, therefore, none of the offence could attributed to the applicants and the company is responsible to refund amount of investors.

5) There is no dispute that the applicants are not directors of the above said company. They are also not office bearers of the company.

6) Learned advocate for the applicants vehemently argued that Section 3 of MPID Act could not be applicable to the

applicants who are not directors of the company. He further argued that person or employee responsible for the management or conducting business or affairs of financial establishment could only be charged under Section 3 of MPID Act. He further argued that prosecution alleged that accused No.1 is main agent of the said company without any supporting documentary evidence or material and also agent is not covered in Section 3 of MPID Act.

7) Learned AGP for State argued that the statement of the witnesses show that accused No.2 induced several customers to deposit their money in the company by stating that it is run by his brother-in-law i.e. accused No.1. The statement of witnesses further revealed that the customers have visited the office of company at the above said address at Latur and handed over amount to both accused. He further argued that there is material on record to show that accused No.1 has purchased immovable property from the amount deposited by the customers. Thus he argued that there is sufficient material on record to proceed further against both the applicants/accused.

8) Section 2(d) of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 defined "Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949.

9) Perusal of above said definition of financial establishment shows that it is not necessary that financial establishment must be a company. It provides that any person accepting deposit under any scheme or arrangement can be called as financial establishment.

10) Section 3 of the said Act is as under : Any Financial Establishment,which fraudulently defaults any repayment of deposit on maturity alongwith 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 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 be punished.

Said section provides that any other person who conducts the business or affairs of such financial establishment could be punished. Said section does not lay down that only director or manager or person responsible to the management of company could be prosecuted. The definition of financial establishment itself does not show that act is applicable to only companies. But it shows that it is applicable to any person who accepts deposit under any arrangement also. Therefore, reliance on the definition of words managing agent, manager, managing director as provided in the Company Act, 1956 by learned advocate for the applicants could not be considered to gather whether applicants have committed offence under Section 3 of MPID Act.

11) Following chart of the statement of witnesses revealed that they and other persons named in their statements have deposited the amount mentioned in the table in their name on the instigation of accused No.2 with accused No.1 and they have handed over the amount to the accused Nos.1 and 2.

Sr.No.	Name of the witnesses	Amount deposited with accused Nos.1 and 2 in Rs.
1	Vishwanath Nagnath Makude	31,04,000-00
2	Daji Baburao Makude	48,20,5000-00
3	Khandu Shankar Shinde	9,39,500-00
4	Hari Eknath Kharade	3,50,000-00
5	Dagdu Dnyanoba Dalve	3,25,209-00
6	Balaji Dagdu Dalve	1,43,654-00
7	Sidharth Sakharam Sawant	12,14,000-00
8	Urmila Namdeo Jadhav	1,07,500-00
9	Sanjay Rajendra Patil	50,000-00

12) The office of said company is situated at Barure Complex, in front of Bus Depot Ambajogai Road, Latur. Prosecution has filed on record copy of registered Leave and License Agreement Deed dated 30.06.2011 executed between accused No.1 as Proprietor of said company and Taufiq Aslam Khan Hamid Ali Khan Kayamkhani for a period from 01.07.2011 to 30.06.2012. This document shows that accused No.1 obtained office for the company on leave and license by showing himself to be Proprietor of the company. There is also statement of Yogesh Bharat Barure that he gave his one shop for the office of

above said company to Mudassar Ahmed Shaikh from 05.09.2012 to 05.08.2013 and later on said Mudassar Shaikh told him that now accused No.1 is head of the branch and said Yogest should execute agreement with him. But accused No.1 Gautam did not meet him and did not pay rent since June 2014 and therefore he locked the premises. During investigation prosecution has recovered the title document which shows that accused No.1 has purchased immovable property from the amount received from amount deposited by customers. The Investigation Officer has also seized the copies of several documents of the company at the instance of accused No.1 and those documents revealed that the depositors have deposited amount of Rs.3,86,74,575/- and Rs.12,57,10,810/- in different schemes.

13) Accused could be discharged under Section 227 of the Criminal Procedure Code, if there is no sufficient ground to proceed against him. But above said material on record shows that there is sufficient ground to proceed against both of applicants/accused for offence punishable under Section 3 of MPID Act. Therefore, contrary argument of learned advocate for the accused could not be accepted.

14) Learned advocate for the applicants/accused further argued that ingredients of offence punishable under Section 409, 406, 420, 109 of Indian Penal Code could not be made applicable to both the applicants as there is no material to support commission of said crime by the applicants. The above

said material is sufficient to show that the applicants have induced or lured the several customers to deposit amount under different schemes of the company. There is allegation that the accused No.1 did not deposit all money given to them by the customers and purchased immovable property from said money. When there is material on record in the form of statements of witnesses that they have given amount in the hands of both applicants and there is documentary evidence that accused No.1 purchased property from said amount then certainly there is sufficient material to prosecute both the applicants for above said offences. There is also material on record that meetings/workshop are conducted at hotel where policy documents and property documents of the company were shown to proposed customers to show them about dream to earn more interest.

15) Learned advocate for the accused argued that in fact accused Nos.1 and 2 are informant as they have with other lodged complaint on 21.05.2016 at Police Station and they also filed writ petition before Hon'ble High Court. But their grievance is that Police should take action to recover amount from Directors and to distribute same to investors. Separate Section 4 is given in MPID Act for said purpose, which is altogether different remedy than offence under Section 3 of said Act. Similarly, pursis (Exh.62) dated 12.06.2018 filed by applicants that they are ready to become approver also could not be a ground to allow discharge applciation.

16) In the background of above said material on record argument of learned AGP is proper that there is sufficient material to proceed further against both applicants/accused and they could not be discharged.

17) Record revealed that bail application of the present applicants were rejected by this Court and by the Hon'ble High Court. Applicants/accused also made an attempt to be released on default bail which is also rejected. One another accused filed Special Leave Petition before the Hon'ble Supreme Court for bail. But he could not succeed and the Hon'ble Supreme Court directed by an order dated 10.04.2018 to decide the present matter at the earliest but not later than one year. Thus parties are directed to co-operate for early disposal of the matter so that it can be decided within stipulated period as directed by the Hon'ble Supreme Court.

18) For above said reasons and particularly as it is not a case that there is no sufficient ground to proceed further against both applicants/accused, the application could not be allowed. Accordingly, following order is passed.

O r d e r

Application is rejected.

(V.D.Nimbalkar)
Date : 18.06.2018. Additional Sessions Judge-1,Latur.

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