Amit Kumar Shrivastava Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: April 8, 2024

Acts Referred: Chhattisgarh Protection of Depositors Interest Rules, 2015 â€" Section 5
Indian Penal Code, 1860 â€" Section 34, 120B, 409
Code Of Criminal Procedure, 1973 â€" Section 239, 482
Chhattisgarh Protection of Depositors Interest Act, 2005 â€" Section 2(l), 6, 10
Prize Chits and Money Circulation Schemes (Banning) Act, 1978 â€" Section 3, 4, 5, 6
Reserve Bank of India Act, 1934 â€" Section 45
Companies Act, 1956 â€" Section 56(1), 56(3), 60, 73
Companies Act, 2013 â€" Section 29, 33(1), 40

Hon'ble Judges: Narendra Kumar Vyas, J

Bench: Single Bench

Advocate: B.P. Singh, Santosh Soni, Suresh Prasad Sharma

Final Decision: Dismissed

Judgement

1. The petitioner has filed present Cr.M.P. under Section 482 of the Cr.P.C. for quashing of registration of offence under Section 10 of the

Chhattisgarh Protection of Depositors Interest Act, 2005 (in short ' the Act') in connection with Crime No. 596/2015 registered at the Police Station

Ã¢â‚¬" Supela District Ã¢â‚¬" Durg (C.G.) for commission of offence and subsequent charge sheet in Spl.C.PDI Act/1/2016 pending before the Special

Judge (District and Session Judge) Durg, District Ã¢â‚¬" Durg, Chhattisgarh.

2. The prosecution story, in brief, is that respondent No. 4 filed a complaint on 19.08.2015 u/s 420/34 of the IPC at Supela Police Station, District Durg

alleging that he has deposited more than 1 lakh rupees in different schemes in the company promulgated by the petitioner and other co- accused

named and styled as ""Yash Dream Real Estate Limited Company"" and as per the assurance given by the petitioner and his company that Rs. 2000/-

per month would be returned in the form of Bond but since 8 month back the petitioner has not returned the said amount on the pretext that the SEBI

has issued direction not to pay to any depositors. There was no any responsible person present to explain the reason or to pay them the amount.

Therefore, they have lodged the FIR on 19/08/2015 against the petitioner and others. Based on the complaint, the FIR was registered against the

petitioner and other coaccused and charge-sheet on 17.12.2015 was filed under Section 409, 120B, 34 and Sections 3,4,5,6 of the Inami Chit Fund Act

as well as Section 10 of Chhattisgarh Protection of Depositors Interest Act, 2005 (in short Ã¢â‚¬Ëœthe PDI ActÃ¢â‚¬â„¢) as well as section 45 of the RBI Act.

3. Learned counsel for the petitioner would submit that as per the order passed in WPCR No. 147/2016 decided on 02/05/2023 this Court has ordered

to decide the criminal case first and then to decide the matter of attachment of property but surprisingly learned Special court has passed the order

making the attachment absolute and sent to the District Magistrate proceeding. The learned Special judge vide impugned order dated 14.07.2023 has

rejected the objection of the petitioner for registration of FIR under Section 10 of the PDI Act by recording its finding that offence has been registered

on 19/08/2015 and the said PDI Act, 2005 has come in existence from 23/07/2015 therefore, Section 10 of the PDI Act, 2005 is applicable. Therefore,

he has filed present Cr.M.P. for quashing of the impugned order dated 14.07.2023 passed by the learned Special Judge.

4. Learned counsel for the petitioner would submit that petitioner has never defrauded or intended to cheat any one. He has stopped the payment in

compliance of order dated 18.12.2014 passed by the SEBI whereby the company was directed to stop every business transaction with immediate

effect and also restrained them not to take, receive or pay a single penny to any one. Thereafter, the SEBI issued order on 15.10.2015 to return the

amount to the depositors with liberty to sell his asset, however, he was taken into custody by the police, therefore, he failed to sell out his asset and

return amount to the depositors.

5. Learned counsel for the petitioner would further submit that the Chhattisgarh Protection of Depositors Interest Rules, 2015 came into existence on

18.09.2015 therefore, the police authorities ought to have followed Rule 5 of the said rules. Since, the police authorities did not follow Rule 5 of the

said rules, Section 10 of the PDI Act is not tenable and would pray for quashment of the same. He would further submit that charge sheet was filed

on 17.12.2015 and the findings recorded by the learned Special Judge regarding application of Section 10 of the PDI Act patently are contrary to the

law and against the criminal jurisprudence that the date of commission of offence is material point and on the date law which is in existence will be

applicable not the law which has been subsequently enforced. He would further submit that the prosecution witness No. 10 has been examined before

the trial Court wherein he has admitted that the PDI Act has been published in the Gazette on 23.07.2015 and para 8 of cross-examination he has

admitted that the Rule 2015 is made applicable from 18.09.2015 in the State of Chhattisgarh and admitted that Section 10 is not applicable in the

present case. He would further submit that the prosecution has wrongly added Section 10 of the PDI Act as such the property of the petitioner is

attached or sold illegally depriving the petitioner from his property. He would further submit that the learned Special Judge without application of mind

has passed the impugned order, which deserves to be set aside. To substantiate his submission he would refer to the judgments of the HonÃ¢â‚¬â„¢ble

Supreme Court in case of Dayle DeÃ¢â‚¬â„¢souza vs. Government of India through Deputy Chief Labour Commissioner(C) and Another {2021 SCC

Online SC 1012}, case of Delhi Devlopment Authority vs. Vandana Gupta {2023 SCC Online SC 925}, case of P.V. Nidish and Others vs. Kerala

State Wakf Board and Another {2023 SCC Online SC 519} and case of Saurav Jain and Another vs. A.B.P. Design and Another {2021 SCC Online

SC 552} and would pray for quashing of the impugned order.

6. On the other hand, learned counsel for the State as well as counsel for respondent No. 4would submit that there is an allegation of collection of

money by accused persons from the victim through their agents on the assurance of return of money by doubling the same after three years, which is

a serious crime and such allegations have been prima facie established during investigation. He would further submit that the petitioner has committed

offence of cheating, forgery and fraudulent default as per the materials collected by the prosecution, which prima-facie establishes commission of

offence. He would further submit that as per the documents collected by the prosecution in the order dated 16.12.2014 the SEBI vide its order has

recorded its finding that the petitioner has raised fund from 45005 persons by issuing unsecured Optionally Fully Convertible Bonds (OFCBs) which is

prima facie has to be construed as public offer and thus, they have not complied with Section 56(1) and 56(3) of the Companies Act, 1956 and as per

the Disclosure and Investors Protection Guidelines all the public issues require to complied with Issue of Capital and Disclosure Regulation.

Accordingly, SEBI initially restrained the petitioner to stop its transaction and thereafter directed to sell the property for returning the amount collected

from the public at large which the petitioner miserably failed to do. He would further submit that the petitioner wanted pre-trial finding from this

Hon'ble Court, which is not sustainable therefore, the instant petition is liable to be dismissed. He would further submit that the charge sheet has

already been filed before the court below and the criminal trial is going on, therefore, the petitioner has remedy to prefer an application under section

239 of Cr.P.C. for discharging him from the criminal case, however, without availing the same, he has approached this Court, thus, on this count alone

the instant petition is liable to be dismissed. He would further submit that considering prosecution documents and charge sheet it appears that the

petitioner has prima-facie committed the offence. The criminal case is pending before the Trial court, thus, the matter is subjudice and under

consideration before the Trial Court, who will decide as to whether the allegations leveled against the petitioner are true or not, therefore, at this stage

it does not require interference by this Court and would pray for dismissal of this petition.

7. I have heard learned counsel for the parties and perused the record.

8. From the above submission made by the counsel for the parties, the point to be determined by this Court is whether petitionerÃ¢â‚¬â„¢s act will fall

within the definition of fraudulent default to attract provisions of Section 10 of the PDI Act, 2005.

9. To decide this controversy raised in this petition it is expedient for this Court to extract relevant provisions of the PDI Act which reads as under :-

2(e) Deposits means deposit as defined in Section 45 -1(b) Reserve Bank of India Act, 1934 (No.2 of 1934)

2(f) Depositors means person who makes deposits with company and includes heirs, legal representatives, administrators or assignee of the

depositors.

2(h) Financial Establishment means an individual, an association of individuals, firm or company incorporated under the Companies Act, 1956 receiving

deposits under any scheme or arrangement or in any other manner but does not include, Corporation or Co-operative Society owned or controlled by

the State Government or the Central Government, or Banking Company as defined under Section 5 of the Banking Regulation Act, 1949 (No. 10 of

1949)

2 (i) Ã¢â‚¬Å“Fraudulent DefaultÃ¢â‚¬ means any financial establishment, which fraudulently defaults any repayment of deposits on maturity and /or any

benefit in the form of interest, bonus, profit or dues in any other form as promised or on maturity or fraudulently fails to render services as assured

against the deposit.

7. Attachment of properties on default of return of deposits and power of special court regarding attachment. - (1) Where the competent authority is

satisfied,-

(i) Upon complaints received from depositors or otherwise, that any financial establishment has fraudulently defaulted.

(ii) That any financial establishment is acting in a calculated manner with an intention to defraud the depositors and such financial establishment is not

likely to return the deposits, the competent authority may, in order to protect the interest of the depositors of such financial establishment, pass an ad-

interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of

any other person or establishment, or if it appears that such money or other property is not available for attachment or not sufficient for repayment of

the deposits, such other property of the said financial establishment or the promoter, partner, director, manager or member of the said financial

establishment, as the competent authority may think fit and publish the order in local newspaper of the area.

(2) The competent authority shall apply within fifteen days from the date of the order to the special court for making the ad-interim order or

attachment absolute.

(3) The competent authority may also make an application to any special court or designated court or any other judicial forum established or

constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject pertaining to any money or assets of a

financial establishment under any similar enactment in respect of money or property or assets belonging to or ostensibly belonging to a financial

establishment or any person notified under the Act situated within the territorial jurisdiction of that special court or designated court or any other

judicial forum as the case may be, for passing appropriate orders to give effect to the provisions of the Act.

(4) Upon receipt of an application under sub-section (2) of Section 7, the special court shall issue show cause notice accompanied by copy of

application filed by the competent authority to the financial establishment or any other person whose property is attached that why the order of

attachment should not be made absolute.

(5) Any person having any interest or claim in the property attached under subsection (1) may apply to the special court within 45 days of the order of

attachment for their claim, after receiving the application/objection the special court shall, after giving an opportunity of being heard to the applicants

and the competent authority, may make such order as deem fit.

(6) For hearing of application/objection provision of the Code of Civil Procedure, 1908, shall be applicable.

(7) If no cause is shown and no objections are made on or before the specified date, the special court shall forthwith pass an order making the ad-

interim order of attachment absolute.

(8) The special court may at the time of passing the final order pass an order of attachment absolute or in part. In making such order the special court

shall not release such part or property so attached as is necessary for repayment to depositors.

(9) The special court may, on application by the competent authority, pass such order or issue such direction as may necessary for sale of property

attached and for distribution among the depositors of the money realised from such sale.

(10) Where an application is made by any person duly authorised or specified by any other State Government under similar enactment empowering

him to exercise control over any money or property or assets attached by that State Government, the special court shall exercise all its powers, as if

such an application were made under the Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such

enactment.

10. Punishment for defaults by financial establishment. - Where any financial establishment fraudulently defaults or any financial establishment acts in

a calculated manner with an intention to defraud the depositors; 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 or of such financial establishment shall be punished with

imprisonment for a term which shall not be less than 3 years but may extend to ten years and with fine which shall not be less than one lakh rupees

but may extend to five lakhs rupees and such financial establishment shall also be liable to fine not less than three lakhs rupees but may extend to ten

lakhs rupees.

10. The learned counsel for the petitioner would submit that alleged commission of offence was prior to enactment of the PDI Act, as such, the

alleged offence cannot fall within the ambit of fradulent default as defined in Section 2 (I) of the PDI Act to attract punishment for default by an

financial establishment as provided under Section 10 of the PDI Act. To substantiate his submission he has referred to the judgment of HonÃ¢â‚¬â„¢ble

Supreme Court in case of T. Barai vs. Henry Ahhoe and Another {(1983) 1 SCC 177} wherein the HonÃ¢â‚¬â„¢ble Supreme Court has held as under :-

22. It is only retroactive criminal legislation that is prohibited under Art. 20(1). The prohibition contained in Art. 20(1) is that no person shall be

convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be

subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite

clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be

convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central

Amendment Act reduces the punishment for an offence punishable under s. 16(1)(a) of the Act, there is no reason why the accused should not have

the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to

mitigate the rigour of the law. The principle is based both on sound reason and common- sense. This finds support in the following passage from

Craies on Statute Law, 7th edn. at pp. 387-88 :

A retrospective statute is different from an ex post facto statute. ""Every ex post facto law ..... "" said Chase J. in the American case of Calder v.

Bull(1) ""must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested

agreeably to existing laws is retrospective, and is generally unjust and may be oppressive ; it is a good general rule that a law should have no

retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their

commencement : as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But

I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the

crime, or increase the punishment or change the rules of evidence for the purpose of conviction ..... There is a great and apparent difference between

making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime.

23. To illustrate, if Parliament were to re-enact s. 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall

be sentence for imprisonment for life, instead of the present sentence of death or imprisonment for life, then it cannot be that the Courts would still

award a sentence of death even in pending cases.

24. In Rattan Lal v. The State of Punjab(2), the question that fell for consideration was whether an appellate court can extend the benefit of Probation

of Offenders Act, 1958 which had come into force after the accused had been convicted of a criminal offence. The court by majority of 2 : 1

answered the question in the affirmative. Subba Rao, J. who delivered a majority opinion, concluded that in considering the question, the rule of

beneficial construction required that even ex post facto law of the type involved in that case should be applied to reduce the punishment.

25. It is settled both on authority and principle that when a later statute again describes an offence created by an earlier statute and imposes a

different punishment, or varies the procedure, the earlier statute is repealed by implication. In Michell v. Brown(1) Lord Cambell put the matter thus :

It is well settled rule of construction that, if a later statute again describes an offence created by a former statute and affixes a different punishment,

varying the procedure, the earlier statute is repealed by the later statute See also Smith v. Benabo.(2) In Regina v. Youle,(3) Martin, B. said in the oft-

quoted passage :

If a statute deals with a particular class of offences, and a subsequent Act is passed which deals with precisely the same offences, and a different

punishment is imposed by the later Act, I think that, in effect, the legislature has declared that the new Act shall be substituted for the earlier Act.

The rule is however subject to the limitation contained in Art. 20(1) against ex post facto law providing for a greater punishment and has also no

application where the offence described in the later Act is not the same as in the earlier Act i.e. when the essential ingredients of the two offences

are different.

26. In the premises, the Central Amendment Act having dealt with the same offence as the one punishable under s. 16(1)(a) and provided for a

reduced punishment, the accused must have the benefit of the reduced punishment. We wish to make it clear that anything that we have said shall not

be construed as giving to the Central Amendment Act a retrospective operation insofar as it creates new offences or provides for an enhanced

punishment.

11. HonÃ¢â‚¬â„¢ble Supreme Court in case of Dayle DeÃ¢â‚¬â„¢souza vs. Government of India through Deputy Chief Labour Commissioner(C) and Another

{2021 SCC Online SC 1012} has held as under :-

23. In the factual context present before us it is crystal clear that the complaint does not satisfy the mandate of sub-section (1) to Section 22C of the

Act as there are no assertions or averments that the appellant before this Court was in-charge of and responsible to the company M/s. Writer

Safeguard Pvt. Ltd. in the manner as interpreted by this Court in the cases mentioned above. The proviso to sub-section (1) in the present case would

not apply. It is an exception that would be applicable and come into operation only when the conditions of sub-section (1) to Section 22C are satisfied.

Notably, in the absence of any specific averment, the prosecution in the present case does not and cannot rely on Section 22C(2) of the Act.

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time

when the offence was committed was in charge 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 and shall be liable to be proceeded against and punished.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had

signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the

company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as

an accused.Ã¢â‚¬â€‹

12. HonÃ¢â‚¬â„¢ble Supreme Court in case of Saurav Jain and Another vs. A.B.P. Design and Another {2021 SCC Online SC 552} has held as under :-

39. Based on the position of law, we find it just to allow the appellant to raise the ground of jurisdiction before us. Allowing the ground to be raised

would not require the submission of additional evidence since it is a pure question of law and strikes at the heart of the matter. We shall now turn to

the merits of this argument.

13. He has also referred to judgment of HonÃ¢â‚¬â„¢ble Supreme Court in case of Bhisham Lal Verma vs. State of Uttar Pradesh and Another {2023

SCC Online SC 1399} wherein the HonÃ¢â‚¬â„¢ble Supreme Court has held as under :-

8. On behalf of the petitioner, Mr. Pradeep Kumar Singh Baghel, learned senior counsel, would argue that a second petition is maintainable under

Section 482 Cr.P.C.. He relied on the judgment of this Court in Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh

and others1. Therein, it was held that a subsequent application under Section 561-A of the Code of Criminal Procedure, 1898, presently Section 482

Cr.P.C, would be maintainable in changed circumstances. It was affirmed that a subsequent application, which is not a (1975) 3 SCC 706 repeat

application squarely on the same facts and circumstances, would be maintainable. To the same effect was the more recent decision of this Court in

Anil Khadkiwala vs. State (Government of NCT of Delhi) and another2. Earlier, in S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another 3, this

Court held that when the first petition under Section 482 Cr.P.C was withdrawn with liberty to avail remedies, if any, available in law, the High Court

would not be denuded of its inherent jurisdiction under Section 482 Cr.P.C. on being petitioned again and the principle of res judicata would not stand

attracted. Again, in Vinod Kumar, IAS. vs. Union of India and others4, a 3-Judge Bench of this Court observed that dismissal of an earlier petition

under Section 482 Cr.P.C would not bar filing of a subsequent petition thereunder in case the facts so justify.

14. HonÃ¢â‚¬â„¢ble Supreme Court in case of Delhi Devlopment Authority vs. Vandana Gupta {2023 SCC Online SC 925} has held as under :-

6. The finding of fact recorded by the trial court with regard to the two directors who came to be acquitted is that there was nothing on record to

indicate that they were in charge of the dayto- day affairs/management of the company. It is required to be noted that it is the company as a legal

entity which was sought to be prosecuted, and the directors were prosecuted by virtue of their vicarious liability under Section 32 of the Act, 1957. It

appears that the two directors (respondents herein), who came to be acquitted were in a position to lead evidence to establish that they were not in

day to day affairs/management of the company.

15. HonÃ¢â‚¬â„¢ble Supreme Court in case of P.V. Nidish and Others vs. Kerala State Wakf Board and Another {2023 SCC Online SC 519} has held as

under :-

19. In the present case, there is no controversy that Section 52A is a penal provision; a person proceeded against faces the prospect, in the event the

charges are proved, of a prison sentence of up to two years; the offence is cognisable and non-bailable, notwithstanding anything to the contrary in Cr.

PC [Section 52A (2)].

20. The injunction against punishing anyone for conduct which was not an offence when it was committed, by an enactment, which creates one,

subsequently, with retrospective effectÃ‚Â¸ is enacted in our Constitution as a Fundamental Right [Article 20(1)11]. A Constitution Bench of this court,

in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh12 had explained the purport of Article 20 (1):

Ã¢â‚¬Å“This article in its broad import has been enacted to prohibit convictions and sentences under ex post facto laws. The principle underlying such

prohibition has been elaborately discussed and pointed out in the very learned judgment of Justice Willes in the well-known case of Phillips v. Eyre

[(1870) 6 QBD 1, 23, 25] and also by the Supreme Court of U.S.A. in Calder v. Bull [3 Dallas 386 : 1 L Ed 648, 649]. In the English case it is

explained that ex post facto laws are laws which voided and punished what had been lawful when done. There can be no doubt as to the paramount

importance of the principle that such ex post facto laws, which retrospectively create offences and punish them are bad as being highly inequitable and

unjust.Ã¢â‚¬â€‹

16. Thus, he would pray for quashing of the impugned order.

17. Per contra, learned counsel for respondent No. 4 would submit that the petitioner has challenged the entire proceeding by filing WPCr before this

Court and the HonÃ¢â‚¬â„¢ble Division Bench in WPCr No. 162/2022 has already held that offence is made out as such the subsequent challenge is hit by

principle of resjudicata. To substantiate his submission he has referred to the judgment of HonÃ¢â‚¬â„¢ble Supreme Court in case of Satyadhyan Ghosal

vs. Smt. Deorajin Debi {1960 AIR 941} and would pray for dismissal of the present Cr.M.P.

18. Learned counsel for the State would submit that SEBI vide its earlier order dated 18.12.2014 (Annexure P/8) has held that Yes Developer has

violated the provisions of Section 56(1), 56(3), 60 and 73 of the Companies Act, 1956, Section 29, 33(1) and 40 of the Companies Act, 2013 and

Regulation 4, 5, 6, 7, 25, 26, 32, 36, 37, 46, 47, 57 and 63 of the ICDR Regulation and directed the petitioner jointly and severally to refund the money

collected through the issue of Redeemable Preference Shares that are impugned in this order along with the interest i.e. promise to the investors. The

SEBI has also restrained them from prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period. Thereafter, the

SEBI vide its order dated 15.10.2015 has directed them to utilise the assets of the company for the sole purposes of making the refund/ repayment to

the subscribers/allotees till the full refund/repayment as directed in the order. The SEBI has further directed the petitioner that to refund Rs.

1,25,81,68,418/- collected through issuance of OFCBs in 2008-2015 at the rate 15% per annum from the date of receipt of money till the date of such

refund or the redemption value is promised and accrued till the date of refund, whichever is higher. The SEBI has directed refund of the amount only

in cash through a demand draft or pay order but the neither the petitioner nor the company Yash Dream Real Estate has refunded the amount,

therefore, the complainant has lodged a complaint on 19.08.2015 at that time, the PDI Act was already enacted by the State of Chhattisgarh on

23.07.2015 itself. He would further submit that the learned trial Court has recorded its finding while submitting the report to this Court that the

directors of the company have sold some properties through registered sale deed which is nothing but fraudulent act of the directors of the company.

Thus, the offence has been rightly registered under the PDI Act. He would further submit that all the directors of the company have filed WPCr No.

147/2016 wherein this Court has passed the following order on 19.07.2021:-

Ã¢â‚¬Å“ This Court vide order dated 16.07.2019 has directed to call for report from the Special Judge (Under the Chhattisgarh Protection of Depositors

Interest Act, 2005), Durg in respect of the facts whether interest of all the investors will be protected if the compromise between the petitioners and

some of the investorsare allowed to be executed. Thereafter, the matter was listed before this Court.

The learned Special Judge submitted his report on 22.10.2019 according to which the agreement arrived at between the petitioners and some of the

investors will not secure interests of all the investors. The learned Special Judge also referred memo dated 26.09.2019 by which District Magistrate,

Durg has stated that the company has received Rs. 47,84,79,068/- from 10,141 investors. The Police Station Supela, District Ã¢â‚¬" Durg has also

submitted list of 2818 investors whose investments have been assessed to Rs. 28,62,52,781/-

The FIR has been filed by the objector Hemant Kumar Sahu on 19.08.2015before Police Station Supela, District Ã¢â‚¬" Durg bearing Crime No. 596/15

under Sections 420, 34 IPC. Copy of the FIR is also annexed along with his objection.

Learned counsel for the objector would submit that as per the complaint 125persons have been cheated but list of 89 persons which has been filed

with thispetition, does not contain their names. As such, their interest has also not been protected.

This fact would reveal that the petitioners have not taken care of interests of all the investors except few, therefore, it is directed that all the depositors

whohave invested with the petitioners' company to raise their claim before the DistrictJudge, Durg from 10th August, 2021 to 20th October, 2021 in

M.J.C. No. 28/2016 (Competent Authority vs Amit Shrivastva and Others) registered under Section 6 of the Chhattisgarh Protection of Depositors

Interest Act, 2005 and in-inturn therepresentatives of the petitioners will receive them and will settle their grievances.

Thereafter, learned District Judge will submit a comprehensive report indicating the number of persons whose interests have been protected by the

petitioners forperusal of this Court by 15th November, 2021.

The petitioners are also directed to circulate the order passed by this Courton the daily newspapers published at Raipur, Durg, Bilaspur, Rajnandgaon,

Jabalpur and Chhattarpur before 5th August, 2021 for information to all the depositors who have invested with the petitioners' company to raise their

claim before the District Judge, Durg in M.J.C. No. 28/2016 (Competent Authority vsAmit Shrivastva and Others) registered under Section 6 of the

ChhattisgarhProtection of Depositors Interest Act, 2005.Ã¢â‚¬â€‹

19. Thereafter, the HonÃ¢â‚¬â„¢ble Division Bench has disposed off the WPCr No. 147/2016 on 02.05.2023. The operative part of the order reads as

under:-

7. In view of the submission made by learned Deputy Advocate General, the present writ petition is disposed off with a direction to the Special Court

to decide the matter within a period of three months and after giving proper opportunities to all the parties in accordance with law.

20. From the bare perusal of the complaint and FIR, it prima facie reflects that offence committed by the petitioner and the company fall within ambit

of fraudulent default as the petitioner instead of refunding the money has started selling of the property through registered sale deed which is nothing

but an attempt to deprive the complainant from repayment of deposits as such it is fraudulent default therefore, the PDI Act has rightly been added by

the prosecution.

21. Thus contention raised by the petitioner that he intends to sell the property and wants to refund to the beneficiaries as per the direction of the SEBI

is found to be without any foundation as this Court in WPCr No. 147/206 has also taken note of the fact that the alleged compromise between the

petitioners and some of the investors will not protect the interest of 10,141 investors as well as list of 2818 investors whose investments have been

assessed to Rs. 28,62,52,871/-. The learned Special Judge while affirming the interim order dated 23.04.2016 has recorded its finding that if the Yash

Dream Real Estate Ltd. would have not sold the property through registered sale deed, then the situation of passing of the order dated 26.03.2016 for

attachment of the property by the District Magistrate would not have arisen which clearly shows that the conduct of the petitioner and other directors

of the company is nothing but a fraudulent default depriving the beneficiaries from repayment of deposits. As such, the PDI Act is fully applicable to

the present facts and circumstances of the case.

22. The HonÃ¢â‚¬â„¢ble Supreme Court in case of State of Maharashtra vs. 63 Moons Techbnologies Ltd. {(2022) 9 SCC 457} has examined the

provisions of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 which are similar to the provisions of

Chhattisgarh Protection of Interest of Depositors Act, 2005 and the HonÃ¢â‚¬â„¢ble Supreme Court has held as under :-

18. The MPID Act was enacted by the legislature in Maharashtra and received the assent of the President on 21 January 2000. The Statement of

Objects and Reasons accompanying the introduction of the Bill states that the statute is enacted to protect the public from the increasing menace of

financial establishments grabbing money from the public in the form of deposits:

Ã¢â‚¬Å“There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is

of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive interest rates of

interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the

services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits to public. As such deposits run into

crores of rupees, it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, especially in the

city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to a make a suitable legislation in the public interest to curb

the unscrupulous activities of such Financial Establishments in the State of Maharashtra.Ã¢â‚¬â€‹

19 Section 3 of the MPID Act envisages punishment upon conviction of every person including a promotor, partner, director, manager or employee

responsible for the management of or the conduct of the business or affairs of the financial establishment which has fraudulently defaulted in the

repayment of deposits on maturity. Section 3 is in the following terms:

Ã¢â‚¬Å“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 from 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 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 default in repayment of such deposit with such benefits in the form of interest,

bonus, profit or in any other form as promised or fails to render any specified service promised against such 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 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.Ã¢â‚¬‹

20. Section 4 contemplates the levy of attachment on properties of a financial establishment on default of return of payment. Section 4 provides that if

on a complaint received from the depositors or otherwise, the Government is satisfied that any financial establishment has failed to return the deposit

on maturity or demand, or to pay interest or an assured benefit, or has failed to provide a service that was assured against the deposit, or if the

Government has reason to believe that any financial establishment is acting in a manner detrimental to the interest of the depositors with the intention

to defraud them, it may attach the money or property acquired by the financial establishment out of the deposit. The provision states that if such

money or property is not available to be attached, the property of the financial establishment or the promoter, director, partner, manager or member

may be attached.

23. From the above stated factual position and law laid down by the HonÃ¢â‚¬â„¢ble Supreme Court it is quite vivid that the petitioner intends to commit

fraudulent default by not paying the refund to the depositors as such, the PDI Act is applicable in the present facts of the case to secure interests of

all the depositors. The intention/omission can be gathered from the overall conduct of the petitioner as held by HonÃ¢â‚¬â„¢ble Supreme Court in case of

Sahara India Real Estate Corporation Ltd. vs. SEBI {(2013) 1 SCC 1} wherein the HonÃ¢â‚¬â„¢ble Supreme Court has held in paragraph 106, 107 and

140:-

106.The maxim Ã¢â‚¬Ëœacta exteriora indicant interiora secretaÃ¢â‚¬â„¢ (external action reveals inner secrets) applies with all force in the case of Saharas,

which I have already demonstrated on facts as well as on law. Conduct and actions of Saharas indicate their intention, we have to judge their so called

intention from their subsequent conduct. Subsequent illegality shows that Saharas contemplated illegality. A personÃ¢â‚¬â„¢s inner intentions are to be

read and understood from his acts and omissions. Whenever, in the application of an enactment, a personÃ¢â‚¬â„¢s state of mind is relevant, the above

maxim comes into play.(Ref. Bennion on Statutory Interpretation, 5thEdn.,p.1104)

107. We have to apply the various provisions of the Companies Act and SEBI Act and the rules and regulations framed thereunder to SaharasÃ¢â‚¬â„¢

conduct and their inner intentions are to be understood from their acts and omissions, by applying the above maxim. SaharasÃ¢â‚¬â„¢ acts and omissions

have clearly violated the provisions of Section73, their failure to list the securities offer to the public was, therefore, intentional and the plea that they

did not want their securities listed, is not an answer, since they were legally bound to do so. The duty of listing flows from the act of issuing securities

to the pubic, provided such offer is made to fifty or more than fifty persons. Any offering of securities to fifty or more is a public offering by virtue of

Section 67(3) of the Companies Act,which the Saharas very well knew, their subsequent actions and conducts unquestionably reveal so.

108. The scope of Section 73 came up for consideration before this Court in Raymonds Synthetics Ltd. & Ors. v. Union of India & Ors.(1992) 2 SCC

255 and this Court held through Dr. Justice T.K.Thommenas follows:

Ã¢â‚¬Å“9. A public limited company has no obligation to have its shares listed on are cognised stock exchange. But if the company intends to offer its

shares or debentures to the public for subscription by the issue of a prospectus, it must, before issuing such prospectus, apply to one or more

recognised stock exchanges for permission to have the shares or debentures intended to be so offered to the public to be dealt with in each such stock

exchange in terms of Section 73..Ã¢â‚¬â€‹

24. The judgments cited by the learned counsel for the petitioner that punishing anyone for conduct which was not an offence when it was committed

and the criminal legislation prohibits retrospective effect is not applicable to the present facts and circumstances of the case, as petitioner was directed

to repay the amount to all the investors by the order of SEBI which has also been violated and thereafter, he has paid money to some of the depositors

not to all the depositors, thus, prima facie offence under the PDI Act has been committed as this Act has been enacted with an object of providing

protection to the depositors by the fraudulent default committed by financial establishment. It is also not in dispute that the Yash Dream Real Estate

Ltd. is a financial establishment defined in 2(h) of the Act of 2005. From the perusal of the above discussions and considering the materials placed on

record and order of the HonÃ¢â‚¬â„¢ble Division Bench dated 02.05.2023 wherein the HonÃ¢â‚¬â„¢ble Division Bench has directed for completion of the

proceeding of confirmation of attachment in accordance with law wherein the opportunities of hearing have been extended to the petitioner also, I am

of the view that no case is made out for interference by this Court.

25. As an upshot, the petition fails and is hereby dismissed.

26. However, it is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of

the present Criminal Miscellaneous Petition only. The Special Judge is directed to proceed further, in accordance with law, without there being

influenced by any of the observations made by this Court while deciding this Criminal Miscellaneous Petition, on its own merit.