**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4131 OF 2019

Aqeel S/o Fazle Abbas .... Applicant

Versus

The State of Maharashtra
and another .... Respondents.

....

Mr.Vishal P. Bakal, Advocate for the Applicant
Mr. Rajendra V. Dasalkar, APP for Respondent No.1 / State
Mr. V.A. Bagadia, Advocate for Respondent No.2

....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 29th SEPTEMBER, 2021

PER COURT:-

1. Heard finally at admission stage.

2. The Applicant is an accused in connection with FIR no. 289 of 2019 registered with City Chowk Police Station, Aurangabad for the offence punishable under Sections 406, 420 of IPC r/w Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short, "MPID Act"). The investigation of the said crime is completed and at present charge-sheet has been submitted before the Court and the case is

registered as RCC No.1546 of 2020 pending in the file of Judicial Magistrate, First Class, Aurangabad. The charge-sheet has been submitted under Sections 406 and 420 of IPC by dropping Sections 3 and 4 of the MPID Act.

3. The applicant has got his petrol pump. In September, 2015, the applicant sought monitory help from respondent no.2 for carrying the business of supply of vehicles for lifting and transporting the garbage. It has been stated in the complaint that the applicant-accused and respondent no.2-informant have cordial relations and there were family relations. The applicant-accused has insisted respondent no.2-informant for investment of an amount of Rs.51,00,000/- in the said business with assurance of giving 20% profit. Thus, considering the relations between the two families, respondent no.2-informant has agreed for the same and accordingly on 07.09.2016, 23.09.2015 and 24.09.2015, by three different cheques paid the amount of Rs.51,00,000/- to the applicant-accused. It is not disputed that the applicant-accused has received the said amount. It has been further contended in the complaint that, the applicant-accused till 19.07.2016, repaid an amount of Rs.4,00,000/- to respondent no.2-informant out of the

principal amount. However, thereafter, the applicant-accused has avoided to repay the principal amount as well as the profit. Thus, on 22.06.2019, respondent no.2 has approached the Commissioner of Police and filed a complaint against him. Thereafter, the applicant-accused has paid Rs.50,000/- to respondent no.2-informant through cheque. Respondent no.2-informant has stated in the complaint that the applicant has not paid the balance amount of Rs.46,50,000/- and the profit amount for the period of three years to the tune of Rs.30,00,000/-. It has been alleged in the complaint that by giving assurance of profit on the investment, the applicant has committed criminal breach of trust and also cheated respondent no.2-informant.

4. It further appears that the applicant in connection with the present crime came to be arrested on 16.08.2019. The applicant-accused has filed the criminal application bearing no.1693 of 2019 for bail under Section 439 of the Code of Criminal Procedure before the Sessions Court, Aurangabad. During the course of hearing of the said application, respondent no.2-informant herein has filed the reply through her advocate vide Exhibit 4 and accepted that the matter is compromised between herself and the

applicant-accused, and the applicant-accused signed MOU (Memorandum of Understanding) and assured to honour the MOU. Accordingly, a copy of the said MOU Exhibit 5 was produced before the Additional Sessions Judge and even respondent no.2-informant has submitted before the Court that the bail application of the applicant-accused may be considered and order may be passed and also prayed to allow the application.

5. Learned counsel for the applicant-accused submits that in the MOU, there is a reference in para 2 that party no.2 (respondent no.2-informant) had paid total amount of Rs.69,00,000/- to the party no.1 (applicant-accused) and the party no.1 is ready to pay the above said amount alongwith profits to party no.2 in terms of arrangement as per clauses A, B, C and D respectively of para 2. Learned counsel submits that, so far as the said total amount of Rs.69,00,000/- is concerned, the applicant-accused has paid an amount of Rs.67,00,000/- and only 2,00,000/- remained to be paid. Learned counsel submits that for the remaining amount with the profits, the applicant-accused has given the blank cheque bearing no.000154 drawn on Bombay Mercantile Bank, Main Branch, Aurangabad. Learned counsel submits that no amount has

been specified in the MOU towards the profit. Learned counsel submits that respondent no.2-informant has taken disadvantage of the said blank cheque by writing an amount of Rs.24,00,000/-. Learned counsel submits that the applicant-accused even at present is ready to pay the balance amount of Rs.2,00,000/- so also ready to pay Rs.8,00,000/- more towards profit. Learned counsel submits that the entire dispute is of civil nature. Even in the transaction as referred in the FIR, respondent no.2 has agreed to pay the amount to the applicant-accused for his business on the basis of sharing the profit to the extent of 20%, on account of the family relations between them. Learned counsel submits that substantial amount has been paid to respondent no.2 and if at all any amount is remained unpaid towards the profit, it is open for respondent no.2 to seek appropriate remedy by approaching the civil Court.

6. Learned counsel for respondent no.2-informant submits that respondent no.2 has invested the huge amount as the applicant has assured the profit @ 20%, however, right from the beginning, there was no intention to pay the profit. The applicant-accused has not only committed the criminal breach of the trust, but also cheated respondent no.2-informant. However, considering the family

relations, respondent no.2 has entered into the MOU with the applicant-accused who was in jail at that time and by the permission of the Court, the said MOU came to be signed. Still then, the applicant-accused has not scrupulously followed the terms of MOU. Learned counsel submits that it has been stated in Clause 2(D) of the MOU that the party no.1 (applicant-accused herein) shall pay remaining amount of profits and failing therein, party no.2 (respondent no.2-informant herein) shall initiate criminal as well as civil action against party no.1, for which party no.1 has no objection. Learned counsel submits that since the terms and conditions as per the MOU have not been complied with, the FIR as well as the proceedings cannot be quashed as per the prayer made in this application.

7. We have also heard the learned APP for State.

8. We have gone through the charge-sheet, particularly the allegations made in the complaint. It appears that due to cordial and close relations, respondent no.2-informant has invested certain amount in the business of the applicant. It has been alleged in the complaint that, the applicant has neither paid the principal

amount, nor shared the profit of the said business with respondent no.2 as agreed. However, it cannot be ignored that the parties have thereafter voluntarily entered into the MOU i.e. Memorandum of Understanding. It is not disputed by respondent no.2 that substantial amount has been paid towards the amount as shown in para no.2 of the said MOU. As per para 2 of the said MOU, the applicant-accused herein has agreed to pay an amount of Rs.69,00,000/- with profits to respondent no.2-informant in terms of Clauses A, B, C and D. So far as Clause D is concerned, it appears to be penal in nature. It is rather not disputed that the applicant-accused herein has cleared all the cheques in terms of Clauses A, B and C of para 2 of the said MOU except the cheque as mentioned in Clause D of para 2. However, no amount has been specified in respect of the said payment. It appears that there is some dispute about the amount to be repaid in terms of the total amount of Rs.69,00,000/-. According to the applicant-accused, he has paid Rs.67,50,000/-. We are not going into all these disputed facts. So far as quashing of the proceedings by exercising powers under Section 482 of the Code of Criminal Procedure Code is concerned, we are just looking into the contents of the MOU to find out as to whether the dispute is of civil nature or whether there is a touch of criminal liability. In terms of para 3 of the MOU even if it is stated that the applicant-accused herein is liable for civil as well as criminal action, however, in our opinion, it is for the Court to decide as to whether the transaction is basically of the civil nature or if there is a touch of criminal liability.

9. In the case of ***Prof. R.K. Vijayasarathy and another Vs. Sudha Seetharam and another*** reported in ***(2019) 16 SCC 739***, in para 10 and 28, the Supreme Court has made the following observations:-

> "10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the

complaint must contain the basic facts necessary for making out an offence under the Penal Code.

11 to 27. .....

28. The jurisdiction under Section 482 of the code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court."

10. In the case of ***Anand Kumar Mohatta and another Vs. State (NCT of Delhi), Department of Home and another*** reported in ***(2019) 11 SCC 706***, in para nos.25 and 26, the Supreme Court has made the following observations:-

"25. Having given our anxious consideration, we are of the view that assuming that there is a security deposit of Rs. One Crore and that he has misappropriated the dispute between the two parties can only be a civil dispute.

> 26. In Indian Oil Corporation v. NEPC India Ltd. and others 4, this Court observed as follows: -
>
> > "13. ….. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged….."
>
> The Court noticed a growing trend in business circles to convert purely civil dispute into criminal cases.

11. In the instant case, though the applicant-accused is ready to pay an amount of Rs.10,00,000/-, more towards the remaining principal amount so also towards the profit, however, respondent no.2 is not ready for the same. On the other hand, respondent no.2 claims an amount of Rs.15,00,000/- towards full and final settlement. It is also pointed out to us by the counsel appearing for the applicant-accused that in terms of the MOU, the applicant-accused has withdrawn the Special Civil Suit bearing no.204 of 2019, which was pending before the Civil Judge, Senior Division, Aurangabad. Thus, considering the entire aspect of the case, we are of the opinion that the allegations made in the complaint are now required to be read with the MOU, which is predominantly civil in nature and there is no touch of criminal liability. The parties

cannot decide the criminal liability on the basis of the averments made in the MOU. Thus, considering the entire aspect of the case, we are inclined to quash the proceedings. Hence, the following order:

ORDER

(i) The criminal application is allowed in terms of prayer clauses “B”, “B-1” and “B-2”.

(ii) The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P. Rane