IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 CRIMINAL APPLICATION NO.1587 OF 2022

JUNAID AHMED JAMEEL SHAIKH

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Zia Ul Mustafa, Advocate for the applicant

Mr. M.M. Nerlikar, APP for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI AND RAJESH S. PATIL, JJ.

DATE : 01st AUGUST, 2022

<u>**ORDER**</u> **: (PER : SMT. VIBHA KANKANWADI, J.)**

1 By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 the applicant seeks quashment of the First Information Report vide Crime No.65/2022 registered with Chalisgaon Road Police Station, Dist. Dhule, for the offence punishable under Section 409, 406, 420, 120-B read with Section 34 of the Indian Penal Code, 1860, under Section 3 of the Maharashtra Protection of Interest of Depositors in Financial Establishments Act, 1999 and under Sections 21, 22, 23 of the Banning of Unregulated Deposit Schemes Act, 2019.

2 Heard learned Advocate Mr. Zia Ul Mustafa for the applicant and learned APP Mr. M.M. Nerlikar for the respondent No.1.

3 Case is not made out even to issue notice to respondent No.2. The respondent No.2 has filed the said First Information Report contending that the present applicant was known to him. Applicant carries business under the name and style as “National Scrap”, which is a proprietary firm and the informant had business transactions. In a way, he was the partner in the past with the applicant and the informant had received good amount of profit. However, the informant says that the said amount in the profit, which was of his share, was with applicant No.1 in the Bank account and then applicant had come with a proposal that he has received good deal now and if the informant continues or keeps amount with his National Scrap firm, then, he would give 50% profit within six months. According to the informant, he had then transferred amount of Rs.10,00,000/- by way of cheque and amount of Rs.20,00,000/- in cash in 2019. Thus, in all, he has given amount of Rs.30,00,000/- to applicant No.1. Other persons like informant had also given deposits or amount to applicant No.1. Therefore, informant says that he as well as others had given amount of Rs.1,41,50,000/- to applicant No.1 and all of them were promised with good returns. When after sometime they realized that the applicant No.1 is not

giving them the returns, they started demanding their amount back. Applicant No.1 has avoided on one or the other pretext. Therefore, the First Information Report has been lodged.

4 Learned Advocate for the applicant has submitted that since informant was also a partner in the business, how he can be said to have been cheated by the applicant. It is then stated that there is no evidence that any amount was deposited in the account of the applicant and, therefore, provisions of Section 3 of M.P.I.D. Act as well as provisions of Sections 21, 22, 23 of Banning of Unregulated Deposit Schemes Act, 2019 are not attracted. He also submitted that when the alleged deposits were given, the said enactment was not even promulgated. It came into force on 21.02.2019 and it is stated that the amounts were allegedly transferred prior to that. Even if for the sake of argument it is accepted that some amount was given to the applicant and he is not returning, then, civil liability will arise, for which the respondent No.2 ought to have filed suit. He cannot transform it in criminal liability.

5 At the outset, it is to be noted that at the time of framing of charge the Special Judge under M.P.I.D. Act would definitely consider as to under which provisions of law charge can be framed. If no offence is

transpiring under a particular act, then, the charge will not be framed. For that purpose question of quashing of entire First Information Report will not arise.

6 A detailed First Information Report has been lodged by the respondent No.2 as to how the things were promised and they were not fulfilled. Definitely, during the course of the investigation the Investigating Officer would collect evidence for the payment mode to applicant. At this stage itself, it can be considered that certain amounts of the respondent No.2 as well as the other persons, who had given money to applicant, are by way of cheque. Therefore, definitely, documentary evidence is available. The applicant is not stating as to why he had collected so much of amount from these persons. No doubt, he has tried to produce on record his account statements, but without proof this Court under powers under Section 482 of the Code of Criminal Procedure cannot consider those documents. Those accounts will have to be proved by the applicant at the appropriate stage before the competent Court. When it is alleged that the applicant had collected amount of Rs.1,41,50,000/- from various persons and as per the informant, it is by way of deposit, then, the provisions of M.P.I.D. Act would get attracted. It is not only the civil remedy, that is, available to the informant and others, who had given the said amount to the applicant, but

taking into consideration the allegations in the First Information Report he had made certain promises about the high returns and it has not been fulfilled by him, then, this cannot be a fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure should be exercised. Application stands rejected.

(Rajesh S. Patil, J) **(Smt. Vibha Kankanwadi, J.)**

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