

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**WRIT PETITION NO. 2424 OF 2021**

1. Mr. Douglas Saldanha )  
Age : 58 Years Occ: Nil )  
R/at:-1463/ Ground Floor-60, )  
Adarsh Nagar, Worli Mumbai — 30 )  
2. Mr. Awdesh Tiwari, )  
Age: 27 years old. )  
R/at: Room No. 4, Mumbra )  
Devi Colony, Adarsh Chawl, )  
Diva (East), Thane. )

**..Petitioners.**

**VERSUS**

1) THE STATE OF MAHARASHTRA )  
Vide its CR.No.95 of 2016 registered )  
at Gamdevi Police Station )  
2) RAJESH CHANDULAL DHARAMSHI. )  
Age: 43 years old, Occ: Business, )  
R/at: 3/19, Om Shri Sainath, )  
Vijaynagar Building, R.H.P Road, )  
Mulund (W), Mumbai400 080. )  
3) VEENA SANJAY VORA. )  
Age: 46 years old, Occ: Housewife. )  
R/at: 2/110, M.H.B Colony, )  
Tata Power, Borivali (E), Mumbai. )  
4) CHANDRAKANT PREMJI SAVLA. )  
Age: 71 years old, Occ: Retired. )  
R/at: 204, Kesar Villa, 2" Floor, )  
Malaviya Road, Vile Parle (E), )  
Mumbai400 057. )

**..Respondents.**

**With**

**WRIT PETITION NO. 1849 OF 2021**

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SACHIN  
RAMCHANDRA  
PATIL

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by SACHIN  
RAMCHANDRA  
PATIL

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Riaz Asgar Patel. )  
Age: 51 years, Occu : Business )  
Permanent Address - )  
411, Riddell Road, )  
Glendwoie, Auckland 1 )

**..Petitioner.**

**VERSUS**

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Vide its CR.No.95 of 2016 registered )  
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R/at: 204, Kesar Villa, 2" Floor, )  
Malaviya Road, Vile Parle (E), )  
Mumbai400 057. )

**..Respondents.**

Mr. Harshad Bhadbhade i/b Mr. Manoj Agham for the Petitioner in Writ  
Petition No. 2424 of 2021.

Ms. Swati Khot i/b Ms. Vidhya Mangavade for the Petitioner in Writ  
Petition No. 1849 of 2021.

Mr. Omneel A. Jadhav for Respondent Nos.2 to 4.

Ms. M. H. Mhatre, APP for the Respondent-State.

CORAM : PRASANNA B. VARALE &  
SURENDRA P. TAVADE, JJ.

Date : **February 16, 2022.**

P. C. :

1. By these two writ petitions, the petitioners, who are facing trial in Special MPID Case No.7 of 2018 pending on the file of Special Judge (MPID), Sessions Court for Greater Mumbai at Mumbai have invoked the jurisdiction of this Court under Article 226 of the Constitution of India, to seek quashment of the proceedings of said special case. The said special case arose from the registration of first information report (FIR) bearing C.R.No.95 of 2016 with Gamdevi Police Station, Mumbai on the allegation of commission of offences punishable under section 420 read with 34 of the Indian Penal Code, 1860 and section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. The said FIR is registered at the instance of Respondent nos.2 to 4 herein.

2. In the present case, on 8<sup>th</sup> January 2016, one Sanjay Jayantilal Vora has lodged the subject FIR against the Petitioners. It is alleged in the FIR that one Khmjibhai Mamaniya introduced the informant to Avdhesh Tiwari (one of the petitioners). The informant was told by said Tiwari that he would get returns/ interest/ commission at the rate of 3% per month on the invested amount. Being so assured and lured, the informant gave an amount of Rs.13.5 lakh to Avdhesh Tiwari, an amount of Rs.5 lakh to Riyaj Patel and deposited an amount of Rs.8.5

lakh in the account of Matrix Derivative company which is owned by Riyaj Patel. It is further alleged that thereafter the informant received the amount (return/interest) from the accused as promised, however, in the month of August 2015, the cheque issued by Arif Patel - brother of Riyaj Patel was dishonoured. The informant became little apprehensive and he made enquiries with Riyaj. He gave evasive replies and bought time. Thereafter Riyaj Patel paid Rs.1 lakh to the informant but he stopped paying further amount from January 2015. The informant tried to contact him on phone, but the phone numbers of Riyaj Patel were out of service. Thereafter, the informant met Ms. Neeta Bhangare secretary of Riyaj Patel and enquired with her about Riyaj Patel. She assured the informant of refund of his amount. However, thereafter Neeta also stopped receiving phone calls. Their office in Lakhoji Mansion was also closed. The informant being convinced that Riyaj Patel, Avdhesh Patel and Douglas Saldhana had committed financial fraud on him, lodged the subject FIR.

3. Upon completing the exercise of investigation, police has filed charge-sheet in the competent Court and now proceedings is numbered as MPID Special Case No.7 of 2018 and pending on the file of Special Judge, MPID Court for Greater Mumbai. During the course of investigation it was found that the accused persons assured the

informant as well as other two witnesses, namely, Veena Sanjay Vora and Chandrakant Premji Savla - Respondent nos.2 and 3 respectively, that they would get an interest/ return/ commission at the rate of 3% to 4% per month on their investment in Maratrix Derivatives Trading Service Private Limited, induced and lured them to invest an amount of Rs.47,50,000/-. However, as assured the accused persons (petitioners herein) did not pay the interest / returns to the respondents on the invested amount nor did they return the invested amount. Therefore, the police have charge-sheeted the petitioners with the commission of aforesaid offences and presently the petitioners are facing trial before the Special Judge, Sessions Court (MPID) Greater Mumbai.

4. Learned Counsel appearing for the respective parties submitted that during the on-going trial of above special case, with the help and intervention of friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant petitions are filed for quashing the above proceedings of Special Case No.7 of 2018 by consent of original complainant as well as other aggrieved persons (witnesses), namely, Respondent Nos. 2, 3 and 4 herein.

5. It is further submitted by learned counsel appearing on behalf of the Petitioners that there are only three investors in the present case and they are impleaded as Respondent nos.2 to 4 herein. They had invested total amount to the tune of Rs.47,50,000/- with the company – Matrixx Derivatives Trading Service Pvt. Limited. They further submitted that during the course of bail proceedings, petitioners on the directions of MPID Court have deposited an amount of Rs.44,25,000/- with the Investigating officer, i.e., Senior Inspector of Police, Gamdevi Police Station, Mumbai who has in turn invested the said amount in FDR of State Bank of India, branch : Huges Road, Gamdevi. Learned counsel appearing for the respective parties further submitted that Respondent nos.2 to 4 had sought release of the said amount from MPID Court. Upon their such application, the MPID Court has released an amount to the tune of Rs.18,80,000/- in favour Respondent Nos.2 to 4. Now, the parties have entered into terms of settlement and the Petitioners have agreed that the balance amount lying in State Bank of India, Branch : Huges Road, Gamdevi, deposited by them as per the directions of MPID Court be released in favour of Respondent Nos.2 to 4. Respondent Nos.2 to 4 have also agreed that the release of the balance amount lying in the said account with interest shall be treated as full and final settlement of all their claims due and payable from the Petitioners.

6. Before this Court, Respondent No.2 to 4 have filed individual affidavits giving no objection for quashment of the proceedings of Special MPID Case No.7 of 2018 pending on the file of Special Judge (MPID), Greater Mumbai. All of them have individually affirmed that it is agreed in the terms of settlement that this affidavit giving by no objection / consent for quashing of Special (MPID) Case No. 7 of 2018 is subject to the agreement to the terms of settlement and releasing the balance amount of Rs.25,45,000/- along with the interest accrued thereon in favour of them. They have further stated that they shall be fully satisfied with the same and they do not wish to proceed with the special case and give their irrevocable consent for quashing the said case. In their affidavits in paragraph 8, they have further submitted that the said special case be quashed.

7. Respondent Nos.2 and 4 are personally present before this Court. On specific queries put to Respondent Nos.2 and 4, they individually submitted that they have made the said affidavits on their own free will, without there being any pressure or undue influence. They have further confirmed that they have no objection for quashing the proceedings of Special (MPID) Case No. 7 of 2018.

8. Mr. Omneel Jadhav, advocate appearing on behalf Respondent no.3 submitted that Respondent no.3 is a lady suffering

from various ailments and therefore she could not personally remain present before the Court, however, on her behalf, her husband is present. On specific queries put to husband of Respondent No.3, he submitted that his wife has made the said affidavit on her own free will, without there being any pressure or undue influence. He further confirmed that his wife has no objection for quashing the proceedings of Special (MPID) Case No. 7 of 2018.

9. Thus, it can be seen that the matter is amicably settled between the parties. Evidently, there were only three investors. All of them have come forward and stated that all their dues and claims stand satisfied once the remaining amount is released in their favour. Thus, all the loss caused to Respondent Nos.2 to 4 is made good by the Petitioners by refunding their entire amount. The compromise records that they have no grudge against each other and the complainant has specifically agreed that he has no objection if the proceeding in question is quashed and set aside. Further, both the parties have undertaken not to indulge in any litigation against each other and withdraw all the complaints pending between the parties before the court. As they do not intend to proceed with criminal case on that basis the submission of the petitioners is that the continuance of criminal proceedings in the aforesaid case will be a futile exercise and mere wastage of precious

time of the court as well as investigating agencies.

10. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of *Madan Mohan Abbot vs. State of Punjab*, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforestated fact-situation, the continuation of prosecution of in the instant case will amount to abuse of the process of Court and therefore it is in the fitness of things to quash the proceedings in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored. In the backdrop of above facts, we are of the considered view that there is no impediment in quashing the criminal proceedings in question.

11. Resultantly, both the petitions are allowed in terms of prayer clause (a) and also partly allowed in terms of prayer clause (b). Insofar as prayer clause (b) is concerned, the interest accrued upon the amount to the tune of Rs.25,45,000/- deposited by the investigating officer in State Bank of India. 50% of the interest accrued on the amount

be returned to Respondent Nos. 2, 3 and 4 in equal shares and rest 50% of the interest accrued on the amount deposited in the Police Welfare Fund.

**[S. P. Tavade, J.]**

**[Prasanna B. Varale, J.]**