IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.404/2022

APPLICANTS :

1) Alka w/o Prakash Agrawal
Through her Power of Attorney Holder,
Shri Vedant Prakash Agrawal.
Age 36 yrs.

2) Prakash s/o Govindlal Agrawal
Age 61 yrs.

3) Prakash Agrawal HUF,
through its Karta : Mr. Prakash Govindlal Agrawal, Age. 61 yrs.

4) Mangalkripa Commodities Private Limited,
through its Authorized Signatory:
Shri Vedant s/o Prakash Agrawal
Age : 36 yrs.

5) Rajpad Traders Private Limited,
through its Authorized Person :
Shri Vedant s/o Prakash Agrawal
Age : 36 yrs.

6) Vidushi d/o Prakash Agrawal,
through her Power of Attorney Holder,
i.e. her brother Mr. Vedant s/o Prakash Agrawal, Age : 36 yrs.

7) Richa w/o Vedant Agrawal,
Through her Power of Attorney Holder,
i.e. her husband Mr. Vedant s/o Prakash Agrawal, Age : 36 yrs.

All the above Applicants
R/o A-6 Ganga Sagar, 83, Canal Road,
Ramdaspeth, Nagpur 440010
E-Mail : prakashagrawalmsn.com
Mobile No.9403070000/9890039000

...VERSUS...

RESPONDENTS :

1. State of Maharashtra
   Through Sitabuldi Police Station,
   Civil Lines, Nagpur – 440001
   E-Mail : sitabuldips.ngp@gmail.com

2. Commissioner of Police,
   Nagpur City, Civil Lines, Nagpur 440001
   E-Mail:cp.nagpur@mahapolice.gov.in

3. Deputy Commissioner of Police
   Economic Offences Wing,
   Crime Branch, Admin. Building,
   4th Floor, Besides Udyog Bhavan,
   Civil Lines, Nagpur – 440001
   Email : dcpeco.ngp@gmail.com

4. Shubhangi Trades India Private Limited
   having its office at 225/4, Shri Ganesh
   Chambers, W.H.C. Road, Laxmi Nagar Square,
   Nagpur – 440022.

5. Shri Satyajit Wachasundar HUF,
   having its office at 255/4,
   Shri Ganesh Chambers, W.H.C. Road,
   Laxmi Nagar Square, Nagpur – 440022.

6. Shri Satyajit Sudhakar Wachasundar,
   residing at Plot No.13, Sneh Nagar,
   Yogakshem Layout, Nagpur.

7. Smt. Shubhangi w/o Satyajit Sudhakar Wachasundar, residing at Plot No.13, Sneh Nagar, Yogakshem Layout, Nagpur.

8. Shri Hrishikesh s/o Satyajit Sudhakar Wachasundar, Residing at Plot No.13, Sneh Nagar, Yogakshem Layout, Nagpur.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

---

Shri Shyam Dewani, Advocate for applicants
Mrs. M.H. Deshmukh, APP for respondent nos.1 to 3

CORAM : AVINASH G. GHAROTE, J.

Order reserved on : 23/03/2022
Order pronounced on : 05/04/2022

O R D E R

1. Heard Shri Dewani, learned Counsel for the applicants.

2. The application challenges the order dated 04/03/2022, passed by the learned Additional Sessions Judge, Nagpur in Criminal Revision Application No.35/2022, whereby the order dated 28/01/2022, passed by the learned Chief Judicial Magistrate, Nagpur, directing the Deputy Commissioner of Police, Economic Offences Wing, Civil Lines, Nagpur under Section 156 (3) of Cr.P.C. to register the offence, investigate the same and file the charge-sheet, as per law has been quashed and set aside.

3. Shri Dewani, learned Counsel for the applicants submits that it was not permissible for the learned Sessions Court, to have exercised the power under Section 397 of Cr.P.C., for passing the impugned order as what was directed by the learned Judicial Magistrate, by the order dated 28/01/2022 was merely investigation into the matter and therefore, there could not have been any interference whatsoever. Relying upon ***Anju Chaudhary Vs. State of Uttar Pradesh and another, (2013) 6 SCC 384***, it is contended that at the stage of Section 156 (3) of Cr.P.C., the law does not contemplate grant of a personal hearing to the suspect, who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of Cr.P.C. is filed terming the suspect an accused that his rights are affected in terms of the Code. He, therefore, submits that there was no question of the learned Sessions Court entertaining the revision at the behest of the applicants. Further relying upon ***M/s. Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918***, it is contended that it was not permissible to scuttle the investigation, which was at a nascent stage. Reliance is also placed upon ***Mohd. Yousuf Vs. Afaq Jahan (Smt) and another, (2006) 1 SCC 627***, to contend that it is competent for the Judicial Magistrate before taking cognizance of the offence, to order investigation under Section 156 (3) of Cr.P.C. Further reliance is placed on ***Priti Saraf Vs. State of NCT of Delhi, AIR 2021 SC 1531***, to contend that a breach of contract would also in given circumstances give right to initiate a criminal proceeding. Further reliance is placed on ***Anilkumar Jinabhai Patel and others***

Vs. State of Maharashtra and others, 2009 All MR (Cri) 1026, to contend that a direction under Section 156 (3) of Cr.P.C., to investigate would not be permissible to be restrained by any proceedings.

4. He further contends that considering the averments made in the complaint as well as the application under Section 156 (3) of Cr.P.C., the ingredients necessary, for the learned Judicial Magistrate to have issued a direction to register the offence and investigate is made out and the learned Sessions Court ought not to have interfered therein.

5. At the outset, it would be material to note that the order dated 28/01/2022 passed by the learned Judicial Magistrate is not as innocuous as it is made to appear, inasmuch as, the order directs (a) to register the offence, (b) to investigate the same and (c) to file the charge-sheet as per law. Thus, a direction to file a charge-sheet is also included in the order of the learned Judicial Magistrate, which was not a direction, which could have been given by him (***see : Abhinandan Jha and others Vs. Dinesh Mishra, AIR 1968 SC 117***).

6. The order further records, in para 6, which is the only para in which reasonings are given that the respondents had sought a deposit of Rs.3 crores from the complainants for setting up a forest resort at Tadoba Chandrapur, with an assurance that, in return, the

deposit would carry an interest of 24% quarterly. Accordingly, it is recorded that a sum of Rs.2.51 crores was given to the applicants, which was not returned and that is the ground on which the order dated 28/01/2022, has been passed. There is no finding in the order dated 28/01/2022, as to any criminality having been found to exist on the basis of allegations as made in the application under Section 156(3) of Cr.P.C. or the complaint made to the police.

7. The complaint made to the police, on 13/05/2021, on which much stress has been laid by Shri Dewani, learned Counsel for the applicants, discloses, that in 2015 the non-applicant No.6-Satyajit Sudhakar Wachasundar had met with one of the complainant/applicant No.2 and had expressed his desire to open a forest resort at Tadoba Chandrapur, for which, it was indicated that the non-applicant no.6 intended to float a company by name M/s. Royaleblue Resorts (India) Pvt Ltd., Nagpur, in which the non-applicant no.6 and his other family members would act as Directors. It was also represented that the setting up of the company, would require substantial investment of about Rs.3 crores, which would be for a period of five years, upon which, he was ready to pay interest @ 24% per annum on quarterly basis. It is on this representation, that the applicants claim to have decided to invest with the non-applicant no.6. Accordingly, it is stated that the applicants, have paid a total amount of Rs. 2.51 crores to the non-applicant nos.4 to 8 from 30/04/2016 to 16/04/2019 in the following manner.

Sr. No.	Date of Transfer	Lenders	Borrowers	Amount	Mode of Transfer
1.	30 Apr 2016	Mangalkripa Commodities Private Limited	Shubhangi Trades India Private Limited	25,00,000/-	Bank
2.	17 Apr 2015 20 Apr 2015	Rajpad Traders Private Limited	Satyajit Wachasundar HUF	25,00,000/-	Bank
3.	02 Nov 2015 14 Mar 2016 24 May 2016 25 Jun 2016	Alka Agrawal	Satyajit Wachasundar	95,00,000/-	Bank
4.	01 Feb 2016 04 Aug 2016	Alka Agrawal	Shubhangi Wachasundar	45,00,000/-	Bank
5.	10 Dec 2015	Prakash Agrawal	Shubhangi Wachasundar	10,00,000/-	Bank
6.	15 Apr 2019	Prakash Agrawal HUF	Hrishikesh Wachasundar	4,25,000/-	Bank
7.	16 Apr 2019	Vidushi Agrawal	Hrishikesh Wachasundar	6,75,000/-	Bank
8.	15 Apr 2019	Richa Agrawal	Hrishikesh Wachasundar	10,00,000/-	Bank
9.	16 Apr 2019	Alka Agrawal	Hrishikesh Wachasundar	30,00,000/-	Bank
Total Rs.2,51,00,000/-					

8. It is further stated, that the applicants, have from time to time received interest, which is indicated from the chart in the complaint, which is as follows:

Sr. No.	Lenders	Borrowers	Interest paid until	Amount Acknowledg-ed as payable on 31.03.2020	Interest amount due from 1 Apr 2020 until 31st May 2021	Outstanding (interest +principal)
1.	Mangalkripa Commodit-ies Private Limited	Shubhangi Trades India Private Limited	30 Dec 2019	26,35,000.00	8,24,692.00	34,59,692.00
2.	Rajpad Traders Private Limited	Satyajit Wachasundar HUF	30 April 2019	35,50,000.00	11,11,065.00	46,61,065.00
3.	Alka Agrawal	Satyajit Wachasundar	31 Dec 2019	1,00,70,000.00	31,51,669.00	1,32,21,669.00
4.	Alka Agrawal	Shubhangi Wachasundar	31 Dec 2019	47,70,000.00	14,92,896.00	62,62,896.00
5.	Prakash Agrawal	Shubhangi Wachasundar	31 Dec 2019	10,60,000.00	3,31,755.00	13,91,755.00
6.	Prakash Agrawal HUF	Hrishikesh Wachasundar	31 Dec 2019	4,50,780.00	1,41,083.00	5,91,863.00
7.	Vidushi Agrawal	Hrishikesh Wachasundar	31 Dec 2019	7,15,056.00	2,23,795.00	9,38,851.00
8.	Richa Agrawal	Hrishikesh Wachasundar	31 Dec 2019	10,60,027.00	3,31,763.00	13,91,790.00
9.	Alka Agrawal	Hrishikesh Wachasundar	31 Dec 2019	31,80,000.00	9,95,264.00	41,75,264.00
	Total			2,74,90,863.00	86,03,982.00	3,60,94,845.00

This would clearly indicate, that monies were lent by the applicants to the non-applicant nos.4 to 8, from time to time, upon which till 31/12/2019 interest has been received by them at the rate agreed of 24% per annum on quarterly basis, which is a period of nearly three years. It is also stated that the non-applicant nos.4 to 8, had also issued a confirmation of account up to 31/03/2020. The basic reason for the complaint is that though the interest component was paid initially @ 24% per annum quarterly, however, eventually the non-applicant nos.4 to 8, failed to make any payment towards the interest component as well as failed to refund the principal amount. When asked as to how much amount was received by the applicants, on account of interest @ 24% per annum quarterly for the period of nearly three years, learned Counsel for the applicants, is unable to point out the same. It would indicate that what is alleged was merely a loan transaction upon which the applicants have received interest @ 24% per annum quarterly, for nearly three years from the dates on which the lending has been done, as indicated in the chart above till 31/12/2019. This would clearly indicate that the transaction was pure and simple civil transaction, whereunder the applicants had decided and given deposits to the non-applicant nos.4 to 8 and were receiving interest as alleged thereupon @ 24% per annum payable quarterly.

9. The application under Section 156 (3) of Cr.P.C. (pg. 323) is based upon identical facts. The applicant no.2 - Prakassh Agrawal, has also instituted a summary suit under Order XXXVII of the CPC against the non-applicant nos.6 and 7, for recovery of a sum of Rs.17,76,154/-, which is based upon the same allegations, as are made in the complaint in question, which is Summary Civil Suit

No.23/2022 (page 392). Similarly, the applicant no.6 has also instituted Summary Civil Suit No.22/2022 against the non-applicant nos.6 and 8 for the recovery of Rs.11,50,398/-. The applicant no.7 has also instituted Summary Civil Suit No.9/2022 for the recovery of Rs.14,28,519/-.

10. The allegations in the complaint are of committing offence under Sections 406, 409, 420, and 427 of IPC. Criminal breach of trust as defined in Section 405 of IPC necessarily mandates that someone entrusted with property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which such person has made touching the discharge of such trust. In the instant case, a loan/deposit has been given to the respondent nos.4 to 8, upon interest @ 24% per annum quarterly and the interest thereupon has been received by the applicants for nearly a period of three years, without any demur whatsoever and it is only when the non-applicant nos.4 to 8 defaulted in the payment of interest in December 2019, that the complaint has been filed for the first time, on 13/05/2021 i.e. a period of nearly one and half year thereafter. It would be therefore apparent that the ingredients necessary for constituting the offence under Section 405 of IPC are not spelt out from the complaint for the same reasons it would be apparent that Section 409 of IPC is also not made out.

11. Section 415 of IPC, which defines cheating, requires an intention to deceive since the inception, which is clearly lacking in the instant matter, as a result of which, the provisions of Section 420 of IPC would also not be satisfied. Section 427 of IPC, deals with mischief causing damage of the amount of Rs.50/- or upwards would necessarily depend upon the definition of mischief as defined in Section 425 of IPC , which necessarily requires the destruction of any property, or any such change in the property or in the situation thereof as destroys or diminishes its value or utility or injuriously effected with the intention to cause or knowing that it is likely to cause wrongful loss or damage, which considering the fact position, as stated above, is also not made out.

12. ***Anju Chaudhary***, (supra) on which reliance has been placed lays down that at the stage of Section 156(3) of Cr.P.C., the suspect/accused is not entitled to any pre-registration hearing and does not dilate on the question as to whether the order issuing a direction to register an offence would be revisable or not and therefore has no applicability. That apart, the question of pre-registration hearing to the accused, does not arise in the instant matter, as no such pre-registration hearing, by the learned Judicial Magistrate, has been afforded to the accused before passing the order dated 28/01/2022. However, since the Judicial Magistrate by the order dated 28/01/2022 directs filing of a charge-sheet, which is impermissible in law, the same was clearly susceptible to revision at the hands of the respondent nos.4 to 8. ***M/s. Neeharika***

Infrastructure Pvt. Ltd. (supra) though while noting, ***Emperor Vs. Khwaja Nazir Ahmad, AIR (32) 1945 Privy Council 18***, lays down, that criminal proceedings ought not to be scuttled at the initial stage and quashing of the complaint/FIR should be an exception and a rarity than an ordinary rule, does not totally prohibit the exercise of such a power but only states that the court should be cautious and more diligent as it is an onerous duty. ***Mohd. Yousuf*** (supra) merely dilates upon the powers of the Judicial Magistrate before taking cognizance, inasmuch as he can order an investigation under Section 156 (3) of Cr. P.C., and holds that registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 156 of Cr.P.C., and is of no applicability. ***Priti Saraf*** (supra) holds, that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether the continuance of the proceedings would be a total abuse of the process of the Court and must be used with proper circumspection, with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction and even in case of a breach of contract, in case the ingredients of the offences under Sections 406 and 420 of IPC are made out, existence of a civil remedy, would not preclude the initiation of criminal proceedings. There cannot be any doubt with this proposition, however, applicability of the same would be based upon the peculiar facts of each case. Though ***Anilkumar Jinabhai Patel*** (supra) holds that to accept the challenge to an order under Section 156 (3) of Cr.P.C., is to injunct or restrain the primary state function of registering offences, however, learned Division Bench of this Court in ***Avinash s/o Trimbakrao Dhondage Vs. The State of Maharashtra and another, 2015 SCC OnLine Bom. 5197***, has categorically held that the order under Section 156(3) of Cr.P.C., is not an interlocutory order, but is a final order terminating the proceeding under Section 156(3) of Cr.P.C. and that the revision under Section 397 or Section 401 of the Code would lie, considering which, the same would prevail over what has been held in ***Anilkumar Jinabhai Patel*** (Supra), which is by a learned Single Judge.

13. In fact, ***Vijay Kumar Ghai & Ors. Vs. The State of West Bengal and Ors.***, ***Criminal Appeal No.463 of 2022*** decided on 22/03/2022 by the Hon'ble Apex Court, after noting the entire law on the issue including ***Hridaya Ranjan Prasad Verma and Ors. Vs. State of Bihar and Anr. (2000) 4 SCC 168; Vesa Holdings Pvt. Ltd. and Anr. Vs. State of Kerala and Ors. (2015) 8 SCC 293*** has held that in case the complaint does not disclose dishonest or fraudulent intention, the proceedings ought not to be permitted to continue and had accordingly quashed the proceedings. In ***Vijay Kumar Ghai*** (supra) while considering the issue of quashing of proceedings under Sections 420, 406 and 120 B of IPC, in the background of a similar position of investment made by the respondent no.2 therein amounting to Rs.2.5 crores, with the appellant therein, in view of which, Rs.2,50,000/- equity shares were issued in favour of the

respondent no.2 and the subsequent complaint, on account of the appellant having failed to bring out the I.P.O. as per the M.O.U. dated 20/8/2009 between them, has categorically held that the entire origin of the dispute emanates from the investment made by the respondent no.2 and therefore, could not constitute an offence under Section 405 and 420 of IPC, as even in a case where allegations are made in regard to failure on part of the accused to keep his promise in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 of IPC could be said to have been made out.

14. The fact situation narrated above, would clearly indicate that the complaint, does not disclose any intention to cheat, or any breach of trust, or any fabrication of account, mischief etc., and the case was merely a breach of contract on account of non-payment of the interest and/or the principal amount, considering which, I do not see any infirmity in the order passed by the learned Sessions Court. There is no merit in the criminal application. The same is dismissed.

(AVINASH G. GHAROTE, J.)