

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

CRIMINAL REVISION APPLICATION NO.64 OF 2023

Sanjay s/o Suganchand Kasliwal

Age : 54 years, Occ : Business,

R/o House No.13, Chintamani Colony,

Deelip Nagar, Samarthnagar,

Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra
(Copy to be served on
Public Prosecutor, High Court
of Judicature of Bombay
Bench at Aurangabad.)

2. Pankaj s/o Radheshyamji Agrawal
Age : 40 years, Occ : Business,
R/o Row House No.6, Pride Plaza,
Vedantnagar, Station Road,
Aurangabad.

...Respondents

Mr. R.N. Dhorde, Senior Counsel i/b Mr. V.R. Dhorde, Advocate for
Petitioner.

Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.S. Patil, Advocate for
Respondent No.2.

Mr. S.P. Deshmukh, APP for the State.

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CORAM : S.G. MEHARE, J.

DATED : MARCH 08, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent
of the parties, heard finally.

2. Heard learned senior counsel for the petitioner, learned
senior counsel for respondent no.2 and learned APP for the State.

3. The offence under Sections 406 and 420 of the Indian Penal Code read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act (for short 'MPID Act') has been registered against the petitioner. When the FIR was registered Sections 406 and 420 of the Indian Penal Code were applied. Immediately the applicant approached this Court to quash the FIR under Section 482 of Cr.P.C. However, during the course of arguments, it was revealed that inadvertently the Sections under MPID Act remained to be mentioned in petition. However, on instructions, he withdrew the proceeding. The investigation officer was restrained from filing the charge sheet by interim relief. However, the fact remains that on the day of filing the said petition, the petitioner/applicant knew that the MPID Act was applied. Since the material facts were suppressed, this Court dismissed the said petition and imposed a cost of Rs.5 lacs. The petitioner impugned that order in the Hon'ble Supreme Court under Special Leave to Appeal. The Hon'ble Supreme Court ordered that the Court is not inclined to interfere with the impugned order. The Special Leave Petition is accordingly dismissed. The cost of Rs.5 lacs was reduced to Rs.1 lac.

4. A preliminary objection has been raised that since the earlier petition under Section 482 Cr.P.C. was dismissed, the applicant cannot approach this Court again.

5. Learned senior counsel Mr. Sapkal would argue that when the petition was dismissed in Supreme Court, the charge sheet was already filed. It must be presumed that the charge sheet was also brought to the notice of the Hon'ble Supreme Court, therefore, the specific observations have been recorded that the Court was not inclined to interfere with the impugned order of this Court dated 11.12.2020. Since the charge sheet was before the Hon'ble Supreme Court and considering the wide scope of Section 482 of Cr.PC., an application under Section 227 of Cr. P.C. has lost the scope.

6. To buttress his arguments, he relied on the case of Pankaj and Ors Vs. The State of Maharashtra, MANU/MH/4413/2022 decided by this Court (Nagpur Bench) dated 12.12.2022. In the said case, the applicant had first filed discharge application and after its rejection he filed a petition under Section 482 of Cr.PC. On this facts, this Court in paragraph No.14 has observed thus;

“14. In the instant case, the applicants had first filed discharge application and after its rejection, they came before this Court by invoking inherent powers of this Court. Although, it is true that there are wider considerations which go into the decision of this Court taken in exercise of its jurisdiction under Section 482 of the Cr.PC. but we must say that these wider considerations include the considerations, called narrower considerations, which weigh with the Trial Court while deciding application under Section 227 of the Cr.PC. While deciding the application for discharge under Section 227 of the Cr.PC, all that the Trial Court has to

examine is as to whether or not there are sufficient grounds available for proceeding further in the matter and if it is satisfied that sufficient grounds are indeed available, the Trial Court is required to proceed to the next Section i.e. Section 228 of the Cr.P.C. by framing charge against the accused. The consideration of existence of sufficient grounds or otherwise governing Section 227 of Cr.P.C. power is also one of the considerations for the High Court to decide on an application filed under Section 482 of Cr.P.C. seeking quashing of the Sessions Trial. But, that is not the only consideration controlling discretion of the High Court under Section 482 of Cr.P.C. There are other considerations as well, as could be found to be stated in the case of State of Haryana Vs. Bhajan Lal (MANU/SC/0115/1992 : 1992 Supp (1), SCC 335), which may govern the decision of the High Court in refusing to exercise its power under Section 482 of the Cr.P.C. But, this is not so while deciding the application under Section 227 of the Cr.P.C. Therefore, it is preposterous to say that even after the rejection of the discharge application of the accused, the High Court can go into the issue again and say that there are no sufficient grounds for proceeding further against the accused”.

7. On the factual background, the petition of the petitioner was dismissed.

8. The learned senior counsel Shri Dhorde for the applicant, advanced the arguments that if the petition under Section 482 Cr.P.C. had been dismissed on merit, the petitioner could not seek relief before this Court after the rejection of the discharge application.

However, the earlier petition was not decided on merit, the present petition is tenable.

9. There was a great dispute over whether the earlier petition, before this Court, under Section 482 Cr.P.C. was decided on merit or not. In the absence of any specific observations that the said petition under Section 482 was dismissed on merit, both sides appear to have interpreted the order suitably. However, the order dated 11.12.2020 reveals that since the fact of the application of MPID Act was not disclosed, the Court expressed disinclination to grant any relief. The applicant was unaware that the Court was imposing the cost. Therefore, he might have approached the Hon'ble Supreme Court for the limited issue of imposing the cost. The order of the Supreme Court is clear that instead of setting aside the order imposing the cost, the cost was reduced. It can safely be said that the Hon'ble Supreme Court did not interfere with the impugned order on merit. Be that as it may, the fact remains that the charge sheet was not referred to when the order dated 11.12.2020 was passed, obviously for the reason that this Court had restrained the investigating officer from filing the charge sheet.

10. Even if it is presumed for the sake of arguments Court that the charge sheet had been referred to before the Hon'ble Supreme, the question is whether a petition against the impugned order would be entertained or not. The Hon'ble Supreme Court, in

the case of Harish Dahiya Alias Harish and another V State of Punjab and others (2019) 18 SCC 69, has pronounced that the grounds for quashing a criminal proceeding and the reasons for allowing an application for discharge are completely different. Merely because an earlier application to quash the entire prosecution under S. 482 Cr.P.C. may have been dismissed, Court could not decline to consider the application for discharge on that ground.

11. The pronouncement in the above case demonstrates that though the application under section 482 Cr. P. C. has been dismissed in High Court; the trial Court has to test whether the material before it is sufficient to frame the charges. The concepts of these two provisions are not only distinct but independent. The order rejecting the prayer for discharge is revisable before the High Court. In view of the legal preposition of law, the Court accepts the case of the petitioner that the revision against the order refusing discharge is maintainable in the High Court though his earlier application under Section 482 Cr.P.C. has been dismissed.

12. The learned senior counsel Mr. Dhorde for the applicant, has vehemently argued that the allegations levelled against the applicant are without foundation. Though the complainant came with a case that he had invested Rs.8 crores and more, he has no evidence to show that such a huge amount was deposited. He would also argue that it was purely a civil contract of sale of the built-up property. A

written draft sale deed was prepared, but the petitioner had a dispute over his partnership firm. Hence, the sale deed could not be executed. He has also referred to the statement of the complainant before the revenue authority while taking stamp fee return, wherein he had stated that since he had no money; the transactions could not be completed. In no case, the provisions of MPID Act would attract though it was a scheme for construction of the house. The transaction could not be completed. The complainant has filed a suit before the Commercial Court. The commercial Court granted a leave to the applicant to defend the suit. He also referred to the claim before the Commercial Court and order granting leave to contest the petition. Referring a letter at page no.267, a letter addressed to the present petitioner dated 20.03.2015, he has vehemently argued that it was the complainant who withdrew his interest from purchasing the property. He also referred to the booking/allotment letter and argued that the allotment was cancelled. On this point, the learned senior counsel Mr. Sapkal has referred to page no.226 and pointed out that it was another firm namely M/s. GA Realities, Mr. Pankaj Radheshyamji Agrawal was the partner of the said firm. The complainant had no concern with M/s. GA Realities. Since the partner of M/s. GA Realities, Mr. Pankaj Radheshyamji Agrawal gave a supplementary statement against the present applicant, the MPID Act was applied.

13. Further, the learned senior counsel for petitioner has vehemently argued that till the father of the complainant was alive, there was no dispute, after his death, everything has been done with ill-motive.

It has also been argued that the learned Sessions Judge totally failed to consider the facts and documents. There are no elements to *prima facie* prove the offences under Section 420 and 406 of Indian Penal Code. There were no sufficient grounds to frame the charges. The documents have been considered erroneously to believe the complainant's FIR. He also read the definition of term 'deposit' as contemplated under Section 2C of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. He also read Section 3 of the said Act and argued that reading these two sections, no offence under the said Act is made out. He relied on the bunch of case laws which are as follows:

1. *State Through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava, (2017) 15 SCC 560.*
2. *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Anr, 2019 ALL SCR (Cri) 1425.*
3. *Kanchan Kumar Vs. State of Bihar, (2022) 9 SCC 577.*
4. *Shivaji s/o Mohanrao Patil Vs. The State of Maharashtra, 2021 ALL MR (Cri) 3225.*

5. *Vijay Kumar Ghai and Others Vs. State of West Bengal and Others, (2022) 7 SCC 124.*
6. *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, (2007) 12 SCC 1.*
7. *International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Others Vs. Nimra Cerglass Technics Private Limited and Another, (2016) 1 SCC 348.*
8. *Sardar Singh Vs. State of Haryana, 1976 ALL MR ONLINE 545 (S.C.).*
9. *Anand Kumar Mohatta and Another Vs. State (NCT of Delhi), Department of Home and Another, (2019) 11 SCC 706.*
10. *Prof. R.K. Vijayasathy and Another Vs. Sudha Seetharam and Another, (2019) 16 SCC 739.*
11. *Vinod Natesan Vs. State of Kerala and Others, (2019) 2 SCC 401.*
12. *Sardar Ali Khan Vs. State of Uttar Pradesh Through Principal Secretary, Home Department and Another, (2020) 12 SCC 51.*
14. The Case laws pertain to Section 227 Cr.P.C., ingredients of offence, breach of contract, endorsement and civil nature of the suit. In the above case laws, it has been held that, the powers under

Section 227 has to be exercised when the Magistrate is satisfied that there are no grounds to frame the charges. The Court framing the charges has to consider the material placed on record along with charge sheet. If the Magistrate is satisfied that there are grounds to frame the charges, he has to frame the charge under Section 228 of Cr.P.C.

In the case of Prof. R.K. Vijayasathy (cited supra), the Hon'ble Supreme Court has laid down the law that Section 482 of Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. If the averments in the complaint 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 IPC. 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 IPC. However, it has also been observed on the basis of fact that the private complaint was lodged after six years after the alleged transaction and three years after filing of suit was an attempt to cloak a civil dispute with a criminal nature despite absence of ingredients

necessary to constitute a criminal offence. On the set of facts, the petition under Section 482 of Cr.PC. was allowed.

15. Further, relying on the case of Sardar Ali Khan (cited supra), the learned senior counsel Mr. Dhorde has vehemently argued that when Civil Court is seized of the very same issue, allowing the criminal proceedings to continue without any criminal element having been established, would be nothing but an abuse of process of law. The said ratio would apply to the present case. The observation of the Hon'ble Supreme Court is very clear that simultaneous proceedings under the civil law as well as the criminal law should not be entertained in the absence of the element of criminal offence having been established. If the elements of criminal offences are prima facie established to frame the charge, there is no absolute bar to seek the remedy simultaneously under criminal as well as civil law.

16. Per contra, the learned senior counsel Mr. Sapkal has referred to the copies of Hundis and cheques and argued that it is a primary document showing that the applicant had accepted the deposit from the complainant and, in return, he promised to give the property from the scheme launched by him. The applicant did not satisfy that he could not complete the transaction due to the dispute in the partnership firm. It was a searched ground to get discharged from criminal liability. Therefore, his intention may be gathered from his conduct. He failed to fulfill his promise; hence, it is an offence

punishable under the provisions of MPID Act. Not only this, the conduct of the applicant may be seen that when this Court granted him interim protection from filing the charge sheet, he disposed of a few properties with the sole intention of depriving the depositors/investors. That itself is sufficient to *prima facie* hold that the applicant had ill-motive since inception. *Prima facie* material is available before the Court to frame the charges. He also relied on certain case laws as follows :

1. *Kamaladevi Agarwal Vs. State of W.B. and others, AIR 2001 SC 3846.*
2. *Priti Saraf Vs. State of NCT of Delhi, AIROnline 2021 SC 148.*
3. *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, AIR 2008 SC 2991.*
4. *Palwinder Singh Vs. Balwinder Singh and Ors, AIR 2009 SC 887.*
5. *State of Tamil Nadu by Ins. Of Police, Vigilance and Anti Corruption Vs. N. Suresh Rajan, 2014 AIR SCW 942.*
6. *Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey, AIROnline 2022 SC 1130.*

17. Those case laws are on the powers of the High Court under Section 482 of Cr.P.C., therefore, this Court is of the view that it would not be appropriate to reiterate the views expressed by the Hon'ble Supreme Court in each case on the basis of facts. He also relied on the case of Yogesh @ Sachin Jagdish Joshi (cited supra) that

pertains to the scope of Section 227 of Cr.P.C. that has already been discussed in the above paras. It is clear from the contents of Section 227 of Cr.P.C. that if the Magistrate is not satisfied with the record and material placed before that *prima facie*, it is not sufficient to proceed with the matter, he may discharge the accused recording the reasons for the same.

18. Perused the charge sheet and material placed on record. The applicant had a case that the amount whatsoever deposited by the father of the complainant was by way of investment to purchase the property, and the draft sale deed was also prepared. Then the question remains why he had issued the Hundis and cheques for the satisfaction of the depositors. The applicant, at this juncture, has no case that said promissory notes and cheques were issued as the security. It is in dispute whether the draft agreement was with the present applicant or with another person, namely Pankaj Radheshyamji Agrawal. Considering the scope under Section 227 of Cr.P.C. and the law laid down by the Hon'ble Apex Court in various case laws, the Sessions Court was not supposed to examine the material as if it were a trial after recording the evidence. The parties seeking discharge must satisfy the Court that *prima facie*, no case is made out. As far as cheating and breach of trust is concerned, the intention is to be gathered from the conduct, and that needs the examination of witnesses on merit.

19. Considering the papers placed on record as a whole, this Court is of the view that the complainant has a *prima facie* case for framing the charges. That apart, there are grounds to frame the charge. The learned Sessions Judge has considered the legal aspects while considering the discharge application under Section 227 of Cr.P.C. Examining the impugned order, the Court is satisfied that the impugned order is free from infirmities, illegalities and impropriety. The application has no grounds to seek interference in the impugned order. As a result, the petition fails and stands dismissed. No order as to costs.

20. Learned counsel for the applicant prays to continue the interim relief for six weeks. Learned counsel for the respondent has strongly opposed the prayer contending that the matter is unnecessarily protracted without progress by filing such petitions.

21. Considering the nature of the dispute and the age of litigation, the interim protection order is extended for five weeks.

22. Rule is discharged.

(S.G. MEHARE, J.)