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

CRIMINAL APPLICATION [APL] No. 745/2022.

1.Pankaj s/o Nandlal Agrawal [Mehadia],
Aged 45 years, Occupation – Business,
resident of Vighnesh Urtnia, Flat No.201,
2nd Floor, Lendra Park, Ramdaspeth,
Nagpur.

2.Balmukund s/o Lalchand Keyal,
Aged 55 years, Occupation – Business,
resident of Plot No.101, Deshpande Layout,
Nagpur.

3.Premlata wd/o Nandlal Mehadia,
Aged 70 years, Occupation – Household,
resident of House No.464, Golchha Marg,
Sadar, Nagpur. ... **APPLICANTS.**

VERSUS

1.State of Maharashtra,
through PSO, Sitabuldi,
Nagpur.

2.Economic Offence Wing, through
the Police Inspector, Nagpur City,
Nagpur, District Nagpur.

3.Ashok s/o Purushottam Agrawal,
Aged 60 years, Occupation – Chartered
Accountant, resident of Flat No.4,
First Floor, Indrayani Apartment,
67, Farmland, Ramdaspeth, Dagdi
Park Road, Nagpur. ... **NON-APPLICANTS.**

Mr. S. Manohar, Advocate h/f Shri Romil Jain, Shri A. Daga,
Advocates for Applicants.
Mr. V.A. Thakare, A.P.P. for Non-applicant Nos.1 & 2.
None for Non-applicant No.3 – Served.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATE : AUGUST 24, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J) :

Heard. **Admit.**

By consent of the learned Counsel appearing for applicants and learned A.P.P. the matter is taken by for final disposal. Non-applicant no.3 though served, has chosen to remain absent.

2. This application is filed by applicants invoking inherent jurisdiction of this Court in terms of Section 482 of the Code of Criminal Procedure, seeking to challenge first information report bearing Crime No.509/2021 dated 02.11.2021, registered with non-applicant no.1 Sitabuldi Police Station, Nagpur for the offence punishable under Sections 420, 406, 409, 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors [In Financial Establishments] Act, 1999 (MPID), along with the related charge sheet baring Special Case No.49/2022 pending in the Court of the Additional Sessions Judge, Nagpur.

3. The learned Counsel appearing for the applicant seeks to challenge the charge sheet on account of absence of prima facie case to prosecute applicants for the charged offences. According to applicants, it was purely a civil transaction, which is merely a failure to oblige the promise and thus, the criminal action would not lie. Unless the material adduced discloses a deceptive intention from the inception, the offence of cheating would not constitute. Besides that, it is the contention of applicants that already under same allegations,

brother of the informant namely - Bijendra had filed a police report in the year 2019, however, the police closed the proceedings by stating it to be of civil dispute. According to applicants on the same set of facts, the second first information report is wholly untenable.

4. Besides that, applicants would submit that the dispute was amicably resolved by way of entering into a deed of settlement. In pursuance of settlement, applicants have paid partial sum of Rs.50 lakhs, however, despite assurance, the informant did not cooperated in quashing of the proceeding. In sum and substance, it is the contention of applicants that continuation of prosecution amounts to abuse of the process of Court, and thus, this is a fit case to exercise our inherent jurisdiction.

5. The State has resisted this application by filing reply affidavit. By and large the contents of first information report have been reproduced. It is contended that though applicants have assured for higher returns, after few years they did not pay the amount. It is stated that applicants have induced the informant and

his family members to invest money, thus there was intention to deceive. According to State, the statement of various family members of informant who invested money has been recorded disclosing non-return of invested sum. On this premise, it is submitted that the police paper makes out a case to put applicants on trial, and thus, this application deserves to be rejected.

6. The first information report dated 02.11.2021 was lodged by the informant Ashok stating that, he along with his family members and relatives, have invested huge sum in different firms of applicants on the assurance of high returns. Particularly applicants have assured to give 12% interest on the investments, but, after 2017 there was no return. It is the contention of the informant that all of them have jointly invested an amount of Rs.4,71,62,044/-, which is due and thus, applicants have duped for huge sum, attracting offence of cheating, criminal breach of trust and conspiracy. Moreover, on account of failure to pay depositors money, the provisions of MPID Act, would attract.

7. At the inception it necessitates us to record few developments which took place during the course of investigation. After registration of the first information report, the parties have amicably resolved the dispute by entering into a Deed of Settlement dated 11.11.2021. Applicants have assured to pay total sum of Rs. 2.50 Crores in installments. Out of assured sum, they have paid Rs.50 lakhs by demand drafts, whilst for the rest, different cheques have been issued. At the time of settlement, by withdrawing the allegations made in the police report, the informant assured to cooperate for quashing of the criminal prosecution. Though the Deed of Settlement was executed, the things did not work as per the settlement.

8. Since the matter was amicably settled, applicants have earlier approached to this Court by filing Criminal Application No.1236/2021 seeking to quash the first information report, on account of settlement. In said proceedings the informant appeared and filed an affidavit dated 18.11.2021, recording his no objection to quash the proceedings. However, again the informant filed another

affidavit dated 26.03.2022 whereby he has virtually withdrawn his consent. It reveals that as per the Deed of Settlement, demand drafts and post dated cheques were entrusted to the informants' counsel Shri Anilkumar Mulchandani. It appears that Advocate Mulchandani has not handed over the cheques to the informant, which happens to be the cause for the informant in non-cooperating in quashing proceeding. This Court has noted the said factual aspect in its order dated 06.04.2022, and directed to forward the papers to the Bar Council of Maharashtra and Goa for taking appropriate action against Advocate Mulchandani. However, since the informant has withdrawn his consent for quashing, this Court has disposed of the petition, as it was primarily filed on account of settlement. However, liberty was granted to applicants to apply fresh seeking to quash the first information report on merits. It is in the light of said factual background, present application has been filed.

9. The record indicates some undisputed facts, which are as below :-

[a] Applicants have assured the informant party to invest

money on the assurance of high returns;

[b] Relying on the promise, informant party has invested huge amount with applicants and their Firms from the year 2004 onwards;

[c] Applicants have regularly paid interest to informant and his group till the year 2017, i.e. for 12 years;

[d] After the year 2017, applicants party was unab le to pay either interest or principal investment;

[e] Informants' brother Bijendra has made a complaint to police against applicants for default in the year 2019;

[f] Vide communication dated 01.06.2019 police informed that the dispute is of civil nature, and thus, the proceeding was closed;

[g] After filing of the existing police report, the parties have amicably settled the dispute by way of entering into a Deed of Settlement dated 11.11.2021;

[h] As per the agreed terms, applicants gave 4 demand drafts totaling of Rs.50 lakhs to the informant party, which were encashed;

[i] As per settlement, cheques of remaining amount were handed over to Advocate for informant Anilkumar Mulchandani;

[j] In view of settlement, informants' supplementary statement dated 12.11.2021 was recorded by police wherein he spoke about the settlement and grievance does not survive;

[k] In earlier Criminal Application No.1236/2021 for quashing on settlement, the informant initially filed an affidavit dated 18.11.2021 giving his no objection to quash the proceeding;

[l] Cheques handed over to Advocate Anilkumar Mulchandani were not handed over to the informant;

[m] Later on informant filed second affidavit withdrawing his consent;

[n] High Court disposed of the proceedings, with liberty.

10. On the above background the short issue falls for consideration is – Whether the prosecution would lie in above circumstances ?

11. On our query, the learned A.P.P. has submitted that besides informant and his relatives, who are party to the Deed of Settlements, there is no other stranger investor. The legality and tenability of the first information report on the canvass of earlier report filed by Bijendra on same cause is a matter of concern. Apart from that, it is apparent that since the year 2004 the informant party invested certain amounts and for next 12 years they have received the assured benefits. In this scenario, the serious question would fall for consideration is - whether the facts would demonstrate applicants dishonest intention from the beginning. To hold a person guilty for

the offence of cheating, it has to be shown that his intention was dishonest at the time of making promise. Obviously, such dishonest intention cannot be inferred from the mere fact that he could no fulfill the promise. In case at hand, applicants took a step forward by entering into a Deed of Settlement, handed over partial amount of Rs.50 lakhs and also gave post dated cheques for the remaining amount. By no stretch of imagination it can be said that since inception i.e. from the year 2004, applicants had dishonest intention behind the entire transaction. The factum of paying assured interest for long 12 years indicates applicants genuine urge to fulfil the promise. The said very fact demonstrates that there was no fraudulent or dishonest intention on the part of applicants.

12. The learned Counsel for applicants would straneously argued that mere breach of contract would not give rise to an offence of cheating, unless deception is played at the very inception. He would submit that even if the intention to cheat has developed lateron, the same does not amount to an offence of cheating. The entire material does not discloses dishonest or fraudulent intention

on the part of applicants at any point of time, rather they have paid the assured sum for 12 long years and even after filing of the first information report, entered into a settlement and paid further amount.

13. In order to substantiate said contention, reliance is placed on the following decisions :

[1] The State of Kerala .vrs. A. Pareed Pillai and another – AIR 1973 SC 326.

[2] Hira Lal Hari Lal Bhagwati .vrs. CBI, New Delhi – AIR 2003 SC 2545.

[3] K.C. Builders and another .vrs. Assistant Commissioner of Income Tax – [2004] 2 SCC 731.

[4] Inder Mohan Goswami and another .vrs. State of Uttaranchal and others – AIR 2008 SC 251.

[5] Harmanpreet Singh Ahluwalia and others .vrs. State of Punjab – [2009] 7 SCC 712.

[6] Vesa Holdings Private Limited and another .vrs. State of Kerala and others– [2015] 8 SCC 293.

[7] Sushil Sethi and another .vrs. State of Arunachal Pradeh and others – [2020] 3 SCC 240.

[8] Vijay Kumar Ghai and others .vrs. State of West Bengal and others – [2022] 7 SCC 124.

Particularly we have been taken through paragraph nos. 37 to 39 of the decision in case of Vijay Kumar Ghai and others [supra], wherein the Supreme Court has reiterated the law laid in the field in its earlier decisions holding that there must be deceitful intention since inception and even intention to cheat develops lateron, the same does not amount to an offence of cheating.

14. To constitute an offence of breach of trust, again there is a requirement of dishonest intention. The heart of both penal provisions is dishonest intention which is materially lacking in the case. The inherent powers under Section 482 of the Code of Criminal Procedure can be exercised when such exercise is justified to prevent abuse of the process of Court. The Court must ensure that criminal prosecution should not be used as an instrument for seeking private vendetta or with ulterior motive. Culpable intention at the time of accepting investment is materially lacking which takes out applicants from the criminal liability. It would be an abuse of the process of Court to allow such action which would result in injustice and prevent promotion of justice. In view of above, the prosecution

failed to make out a prima facie case to proceed, hence, we are inclined to invoke out inherent jurisdiction. Criminal Application is thus, allowed and disposed of.

The first information report bearing Crime No.509/2021 dated 02.11.2021, registered with non-applicant no.1 Sitabuldi Police Station, Nagpur for the offence punishable under Sections 420, 406, 409, 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors [In Financial Establishments] Act, 1999 (MPID), along with the related charge sheet baring Special Case No.49/2022 pending before the District Judge-15 and Additional Sessions Judge, Nagpur is hereby quashed and set aside, so far as it relates to Applicants - Pankaj s/o Nandlal Agrawal [Mehadia], Balmukund s/o Lalchand Keyal and Premlata wd/o Nandlal Mehadia, only.

15. We may clarify that this order would not apply to stranger investors, if any.

JUDGE **JUDGE**

Rgd.