IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL REVISION APPLICATION NO. 131 OF 2023

Khan Abdul Kadar s/o
Nusrat Ilahi Khan
Age 38 years, Occ. Business
R/o. Plot No.2, Jaswantpura,
Central Naka Road,
Aurangabad
(Presently in Harsul jail) ...Applicant

versus

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

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Advocate for Applicant : Mr. Shaikh Mazhar A. Jahagirdar with Mr. Patel S. Farhan,
APP for Respondents: Mrs. Pratibha J. Bharad

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 1st MARCH, 2024.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.

2. By this revision application, the applicant has challenged an order passed by the Special Court (M.P.I.D.) at Aurangabad below Exh.17 in Special Case No. 184 of 2021 dated 03.03.2023.

3. Brief facts, giving rise to this criminal revision application are as under:-

a) One Mohd. Ajhar Rahimuddin Qureshi a software engineer lodged a report against the applicant and co-accused persons alleging that he has been duped for an amount of Rs.1,20,00,000/-. It is averred in the report that he purchased agricultural land Block No. 401 situated at Kharghar, New Mumbai for Rs.20,00,000/-. He came back to Aurangabad in 2014. He sold his land at Kharghar for consideration of Rs.48,00,000/-. He decided to start new business. He met the applicant, who was his friend. He asked him as to what business he is doing. He averred that he is running N.K. Multi Services firm in which his father-Nusrat Ilai Khan, father in law-Ishrat Khan, brother- Navid Khan and wife-Asna Rabab Khan are partners. He is doing the business of share marketing and real estate, sale, purchase and development. He states that he gets reasonable amount of income.

b) The informant told this applicant that he has sold his flat for Rs.48,00,000/- and he is intending to invest that amount. At that time, the applicant told him that he can invest that amount with his firm and he will get 10% to 15% monthly benefit. He also assured that one Kazi Shafiuddin, resident of Buddhilen, Mohd. Shahed Siddiqui and others have also invested their amount and they are getting benefit of it. He told him that Kazi Shafiuddin is his co-brother and he will discuss with him and then tell him about it. It was discussed with Kazi Shafiuddin and accordingly he told him that he is getting reasonable benefit from that investment. Thereafter, on 5.2.2019 the applicant met him at Budhilen, Aurangabad in Pakija Hotel. At that time, he requested the informant to invest Rs.25,00,000/-. He stated that he was having only Rs.3,50,000/- and invested that amount in the name of brother in law of this applicant viz. Sujat Khan in Equitas Small Finance Bank Limited, Branch Aurangabad. Accordingly, a partnership agreement was executed on 1.3.2019. The said partnership agreement was notarized. In the month of March, 2019, the informant got Rs.52,500/- as benefit/income out of that amount and in the month of April, 2019 he got the same amount of Rs.52,500/-. Therefore, the informant got confidence about the benefit of the amounts which he had invested. Thereafter on 15.5.2019, the applicant again requested him to invest some amount. At that time, in the month of June, 2019 the informant got Rs.1,50,000/- as benefit/income of the amount.

c) On 15.7.2019, the applicant told him that land Block No.62 admeasuring 2 acres is scheduled to be developed and for that huge amount is required. He told him to invest some amount in the said project. He showed that agricultural land to the informant and requested him that he requires written agreement. Thereafter, he deposited Rs.5,00,000/- in the account of this applicant with ICICI

Bank, Branch Washi, New Mumbai. He deposited that amount on 17.7.2019. At that time, the applicant told the informant that on the next date, he will execute an agreement of that investment. Thereafter, it was executed on stamp paper of Rs.100/- with the notary and handed over one cheque of Rs.5,00,000/- of HDFC Bank. Thereafter, the informant got benefit of Rs.42,500/-, which was transferred in his ICICI bank account. Again the informant invested Rs.1,00,000/- by transferring that amount in the account of wife of this applicant Mrs. Asna Khan. Again the informant got Rs.41,000/- benefit which was transferred in his account in ICICI bank. Thereafter, again the applicant requested for Rs.6,00,000/- to Rs.7,00,000/- in his bank account. He told that fact to his brother Mohd. Jafar. His brother became ready and gave him Rs.5,50,000/- as hand loan. Thereafter, one agreement was executed for payment of total amount of Rs.17,00,000/-. Thereafter, an agreement was executed for receipt of an amount of Rs.62,50,000/- of other persons. The applicant again told the informant to invest more amount. Then the applicant paid him Rs.1,50,000/- on 2.12.2019. Thereafter, that agreement was also notarized on 28.2.2020. One Shaikh Najir Patel invested Rs.26,00,000/-, one Adil Siddiqui Mustak Ahmed invested Rs.10,00,000/- and one Nabil Ahmed Shakil Ahmad invested Rs.10,50,000/-. Thus, they all three have invested total amount of Rs.46,50,000/- with this applicant. The informant invested total amount of Rs.28,00,000/- by transferring the same by online mode as well as cash in the N.K. Multi Services Firm. Thereafter, the applicant stopped to pay the benefit/refund of that amount. He stopped repaying that amount and threatened to kill him. Therefore, report was lodged.

4. An application was moved in Special case No. 184 of 2021 raising a ground that Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (For short "M.P.I.D. Act") is wrongly invoked against the applicant. The applicant contended that the applicant has never given any assurance to the informant or any other depositors as alleged by the prosecution. The learned trial court held that the provisions of M.P.I.D. Act are rightly invoked against the applicant. Prima facie, there is substantial documentary evidence against the applicant. The applicant has no right to retain the amount deposited by the investors. Thus, the complicity of the applicant in commission of said crime is established and therefore, the application filed under Section 227 of the Cr.P.C. was rejected.

5. The grounds of objection of this revision application are that the learned trial court failed to consider that the M.P.I.D. Act is not applicable as the applicant is not a financial institution nor the applicant is running the financial institution. There is no any such scheme to deposit that amount and there was no promise to take periodical benefits. It is transaction in the nature of handloan. Therefore, the provisions of I.P.C. or M.P.I.D. Act are not applicable. The said transaction is of a civil nature and therefore, the applicant

deserves to be discharged as the order passed by the trial court is erroneous, illegal and not sustainable. It is lastly prayed to quash and set aside the impugned order and discharge the applicant.

6. Learned advocate for the applicant pointed out the agreement executed by the applicant and the informant and others. He submitted that it is a transaction of civil nature and no question of criminal liability arises. Learned advocate for the applicant pointed out the provisions of sections 4 and 5 of the M.P.I.D. Act and also definition of deposit and financial establishment as defined under Section 2 of the M.P.I.D. Act.

7. Learned advocate for the applicant is relying upon the authority of the Hon’ble Supreme Court in the case of ***Sarabjit Kaur vs. State of Punjab and another, reported in (2023) 5 SCC 360***, in which the Hon’ble Supreme Court in para 13 has observed as under:-

> *“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only*

request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurize parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court."

8. In the case of ***Chhaya Jateen Sharma and another vs. State of Maharashtra and another, reported in 2019 SCC OnLine Bom. 11370,*** relied upon by the learned advocate for the applicant, this court in para 4 has observed as under:-

"4. Perusal of the complaint as well as the examination-in-chief of the complainant do disclose that it is the case of the complainant that the money was accepted by respondent No.2 from several other sources. Neither the persons have examined, nor their statements or any evidence has been placed on record, which would disclose that respondent No.2 has accepted that amount from those individuals in the form of "deposit". The term "deposit" of MPID Act, 1999 has a defined connotation and it includes and shall be deemed always to have been included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be

> *returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form. Exception is made in respect of any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State. The term "Financial Establishment" is also defined under the enactment to mean any person accepting deposit under any scheme or arrangement or in any other manner. None of the ingredients of the deposit or the financial establishment can be discerned from the transaction which the complainant has entered into with respondent No.2 and the learned Trial Court was justified in not entertaining the complaint filed by appellant No.1/original complainant seeking to invoke the provisions of the MPID Act, 1999."*

9. Learned A.P.P. for the State strongly opposed the application and submitted that the application is misconceived and essential ingredients of committing the crime are established against the applicant and thus, the trial court has rightly considered the facts and circumstances of the case and statements of witnesses. The statements of witnesses show that the applicant assured them to deposit the amount in his registered firm. It is undisputed fact that the applicant is one of the partner of that firm and he from time to time assured the informant and others to deposit the amount. It is decisive that there is elements of cheating i.e. fraudulent intention at the beginning of the transaction. It is a prosecution under Section

420 r.w. 120-B and 506 of I.P.C. against the applicant. As far as invoking the provisions of the M.P.I.D. Act are concerned the essential ingredients are that the same must be a deposit as defined under sub-Section (c) of section 2 of the M.P.I.D. Act, which reads as under:-

> *"2 (c) "Deposit" Deposit" means the deposit of money either in one lump sum or by installments made with the Financial Establishment for a fixed period for interest or for return in any kind or for any service and includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of specified service with or without any benefit in the form of interest, bonus, profit, or in any other form, but does not include—*
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> *(i) amount raised by way of share capital or by any way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, i.e. the Securities and Exchange Board of India Act, 1992."*

10. The alleged agreement executed by the applicant with those persons dated 16.11.2019 for total amount of Rs.62,52,000/- which was given to him. In the said agreement, the informant is shown at Sr.No.5. in which he has invested Rs.17,00,000/-. It is mentioned that it is a transaction of handloan and for security the cheques are also given to them. Lastly, it is mentioned that it is a partnership agreement. But nowhere it is mentioned that it is the

amount contributed as capital for partnership business as envisaged in Section 2(c) (iii) of the M.P.I.D. Act. Thus, in some of the agreements, the applicant has also agreed that he will pay some profit out of that amount. The subsequent conduct of the applicant as well as the informant and other witnesses is shown that they have received some amount from this applicant. On the contrary, there are allegations that the applicant has assured them that he will repay that amount. There are ingredients of cheating and dishonest intention on the part of this applicant while executing such deceptive agreement with them. No doubt, a breach of contract does not give rise to criminal prosecution. Some times mischiefs are of civil and criminal nature. This mischief is civil and criminal also. However, fraudulent and dishonest intention is decisive to constitute charged sections. From these agreements as well as the statements of witnesses, prima facie, it seems that there is material evidence of fraudulent and dishonest intention on the part of this applicant. Therefore, the authorities of ***Sarabjit Kaur (supra)*** is not helpful to the applicant.

11. Though the word “deposit” is used in the said agreement, there is criminal dishonest intention on the part of the applicant to cheat and not to repay that amount which revealed from the conducts of the applicant. Further, they are not made partners and in due course they have not received benefits out of the said partnership firm business in the form of profit. Therefore, there is no substance in the argument of learned advocate for the applicant that it is a dispute

of civil nature and therefore, authority in the case of ***Chhaya Jateen Sharma and another (supra)*** is also not helpful to the applicant.

12. No doubt, some amount is deposited in the account of the informant from time to time but as far as other persons with whom agreement is executed by this applicant are concerned, no such amount from the alleged partnership firm is paid to them as profit, which can be seen from pages 93, 94, 102 to 105 of investigation papers.

13. Considering serious nature of the crime and the fact that the applicant is involved in serious crime, there is reasonable ground to proceed against the applicant as contemplated in Section 227 of the Cr.P.C. There is no substance in the grounds of objection raised in the revision application. There is no illegality or perversity in the impugned order. The revision application deserves to be dismissed. It is dismissed accordingly.

14. Rule discharged.

(SANJAY A. DESHMUKH, J.)

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