



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2296 OF 2021

1. Narayan S/o Chhaganlal Gadodia
Age : 70 years, Occ : Business,
R/o Hans Cotton Compound,
Khamgaon, Dist. Buldhana.
2. Vijay S/o Ramniwas Gadodia
Age : 64 years, Occ : Business,
R/o 36/3, Shnehalataganj, Indore
3. Meena W/o Rajendra Gadodia
Age : 57 years, Occ : Housewife,
R/o Hans Catton Compound,
Khamgaon, Dist. Buldhana.
4. Seema W/o Santosh Gadodia
Age : 52 years, Occ : Housewife,
R/o Hans Cotton Compound,
Khamgaon, Dist. Buldhana.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through Police Inspector,
Vedant Nagar Police Station,
Aurangabad.
2. Suresh Zumbarlal Gandhi
Age : 54 years, Occ : Business,
R/o Flat No.D-4, plot No.3,
Ashtavinayak Enclave,
Station Road, Aurangabad.

..RESPONDENTS

...
Mr. Rajendra Deshmukh, Senior Advocate a/w Mr.Rahul Joshi i/b
Mr.Devang R. Deshumukh, Advocate for applicants.

APP for Respondent- State : Mr. A.M. Phule
Advocate for respondent No.2 : Mr. Devdatta P Palodkar

...

**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

RESERVED ON : 15th JANUARY, 2025.

PRONOUNCED ON : 10th FEBRUARY, 2025.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. Respondent No.2 in the present application has lodged FIR against the applicants with Police Station Vedantnagar, Aurangabad City on 18.08.2021, vide FIR No.229/2021, for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (Hereinafter referred to as “IPC” and “MPID” respectively for brevity).

2. Respondent No.2 – Informant has lodged the FIR on behalf of two business entities i.e. Kisan Agro Industries and Anand Cotgin Pvt. Ltd. He states that the partners of Kisan Agro Industries, namely, Annasaheb Mane Patil and Sharad Gandhi have authorized him to look after the affairs of the said firm, vide registered power of attorney dated 05.06.2008. He further states that he and his son are Directors of the other entity Anand Cotgin Pvt. Ltd. The aforesaid two business entities are engaged in business of sale and purchase of cotton yarn.

Kisan Agro to M.C.G. Spinners :-

Sr. No.	Date	Bill	Weight	Amount	Date of receive	Deposited	Balance
1.	15.10.2020	55	136.08	26,56,776	23/10/2020	26,56,776	---
2.	23/10/2020	56	90.72	18,11,221	---	---	18,11,221
3.	24/10/2020	57	67.73	14,07,897	24/10/2020	14,07,897	---
4.	24/10/2020	58	68.34	14,20,468	24/10/2020	14,20,468	---
5.	16/11/2020	81	136.08	28,56,964	---	---	28,56,964
						Total	46,68,185

Sr. No.	Date	Bill	Weight	Amount	Date of receive	Deposited	Balance
1.	09/10/2020	157	136.08	25,47,621	22/10/2020	25,47,621	---
2.	22/10/2020	159	136.08	27,97,668	---	---	27,97,668
						Total	27,97,668

3. Out of seven consignments, payments have been received for four consignments only. A sum of Rs.46,68,185/- is not paid to Kisan Agro Industries for two consignments of cotton yarn and a sum of Rs.27,97,668/- is not paid to Kisan Agro Industries for one consignment. Respondent No.2 states that applicant no.1 had expressed inability to make immediate payment of the outstanding amount and requested for some time to make a payment stating that some property was put up for sale and accordingly, the amount will be arranged. He further states that applicant nos.1 and 2 had discussion with Annasaheb Mane, partner of Kisan Agro Industries and himself with respect to repayment of amount. He states that applicant nos.1 and 2 suggested that outstanding amount should be treated as a deposit made by aforesaid two undertakings with M.C.G. Spinners, firm of the applicants, and that, the said amount would be refunded within a period of two months with interest at the rate of 2% p.a. Accordingly, two documents titled as “**Thevpatra**/Deposit Receipt” dated 16.03.2021 were executed by applicant nos.1 and 2 as partners of M.C.G. Spinners, are in favour of partners of Kisan Agro Industries namely Annasaheb Mane Patil and Sharad Gandhi and another in favour of respondent no.2 – Suresh Gandhi, Director of Anand Cotgin Pvt. Ltd. The cheques issued by the applicants for payment as per terms of deposit receipts were dishonoured. In these circumstances, the aforesaid FIR has been

lodged for the offence punishable under Sections 406, 420 read with Section 34 of the IPC and under Sections 3 and 4 of the MPID.

4. Based on the said FIR, respondent no.1 started investigation and after completion of the same filed Final Report/Charge-Sheet under Section 173 of the Code of Criminal Procedure on 08.07.2023, vide Charge-Sheet No.52/2023, pursuant to which, Special Case No.239/2023 came to be registered against the present applicants and the said case is pending on the file of the learned Special Judge under MPID at Aurangabad.

5. It will be pertinent to mention here that the business Concern of the applicants M.C.G. Spinners is referred as a company and as also a partnership firm in the FIR. However, in the documents dated 16.03.2021, the names of applicant nos.1 and 2 are mentioned as partners of M.C.G. Spinners. Learned Senior Counsel Shri Rajendra Deshmukh appearing on behalf of the applicants also confirmed that M.C.G. Spinners is a partnership firm.

6. Learned Senior Counsel Shri Rajendra Deshmukh appearing for the applicants initially contended that applicant nos.3 and 4 had tendered resignation as partners of the firm on 21.01.2020,

vide deed of retirement dated 21.01.2020 with effect from said date.

He states that the transactions are subsequent to the date of retirement of applicant nos.3 and 4, and therefore, the prosecution against applicant nos.3 and 4 needs to be quashed. Having regard to the scope of present proceeding, which is filed under Section 482 of the Cr.P.C., we are afraid, such disputed questions of facts will be beyond our province while entertaining application for quashing of FIR under the said provision. The said contention is therefore rejected.

7. As regards merits, learned Senior Counsel contends that out of seven consignments payment is made with respect to four consignments. He states that due to genuine financial difficulties payment for three consignments could not be made. He refers to the FIR to demonstrate that applicant no.1 had himself approached respondent no.2 and one of the partners of Kisan Agro Industries to discuss the modalities for payments. He contends that the conduct of the applicants will demonstrate that there was absolutely no *mens rea* to attract offence under Sections 406 and 420 of the IPC. As regards MPID, his contention is that the provisions of the said Act are not attracted. He states that the two documents dated 16.10.2021 cannot be treated to be deposits within the meaning of Section 2(c) of the MPID. He further contends that the partnership firm of the applicants

also does not fall within the definition of term “Financial Establishment” as defined under Section 2(d) of MPID. His contention is that the provisions of MPID will not be attracted in case of regular business transaction between a buyer and seller. He states that since the applicants could not make payment of sale consideration of the goods purchased by them, they had requested the seller to grant further accommodation on the condition that they will pay interest on the outstanding amount of sale consideration. Such amount according to him will not be covered under definition of deposit under Section 2(c) of MPID and having regard to the nature of transaction, the provisions of MPID shall not be attracted. Learned Senior Counsel further argued that the agreements titled as deposit receipts are in fact in the nature of agreements for extension of margin/time frame granted by seller to the purchaser, subject to payment of interest. According to him, the said documents only demonstrate that the parties had agreed upon deferment of payment due and payable by the firm of the applicants (purchaser) to Kisan Agro Industries and Anand Cotgin Pvt. Ltd. (sellers of cotton yarn). He argues that such transaction cannot be said to be covered by the provisions of MPID. Shri Rajendra Deshmukh, learned Senior Counsel also further submitted that in view of dishonour of cheques, the holders of the cheques could have filed civil suit for recovery of amount or could have initiated criminal prosecution as

contemplated under Section 138 of the Negotiable Instruments Act. He argues that filing of FIR alleging offence under Sections 406, 420 of the IPC and Section 3 of the MPID is not permissible.

8. Per-contra, Shri Devdatta Palodkar, learned counsel for respondent no.2 contends that the term deposit as defined under Section 2(c) of MPID is definition of a very wide connotation. He points out that the definition includes receipt of money in any form except the deposits which are specifically excluded under clause (i) to (v) of clause (c). He contends that the transaction between the parties is not covered by any of the exceptions to clause 2(c), and therefore, the amount promised to be paid by the applicants falls within the definition of deposit under Section 2(c) of the MPID. As regards section 2(d) his contention is that any person, who accepts any deposit, except a Corporation or Co-operative Society owned or controlled by the State or Central Government or Banking Company, is covered under the definition of financial establishment. He states that the applicants have failed to keep their promise of making repayment of deposit as per terms and conditions recorded in two documents dated 16.03.2021, offence under Section 3 of the MPID is clearly made out. As regards Sections 406 and 420 of the IPC, his contention is that whether the failure to pay is on account of genuine financial difficulty or a

deliberate act can be decided only upon a full-dressed trial, and therefore, the FIR should not be quashed with respect to the said provisions as well.

9. Shri. A.M. Phule, learned APP appearing for respondent no.1 has advanced submissions supporting the contentions raised by respondent no.2.

10. The matter was heard on 15.01.2025 and was closed for orders. Thereafter, on 17.01.2025, learned counsel for respondent no.2 sought leave to file judgment dated 10.12.2018 passed by this Court in Criminal Writ Petition No.1489/2018. This motion was made in presence of learned counsel on record for the applicants, who had assisted the learned Senior Counsel during the course of hearing. Copy of the judgment was also handed over to the learned counsel for the applicants in our presence. However, learned counsel for the applicants did not make any request to advance further submissions on the said judgment.

11. As regards the provisions of MPID, the facts of the present case and those in Criminal Writ Petition No.1489/2018 bear a close resemblance. The arguments advanced in the said matter with respect

to MPID were also similar in nature. This Court had then refused to quash the FIR expressing that registration of offence under MPID was possible in the facts of that case. We may, however, immediately observe that final opinion as regards applicability of MPID is not recorded in the said judgment dated 10.12.2018. The observations in paragraph nos.10 and 11 of the judgment demonstrate that a tentative opinion was formed that the provisions of MPID may be attracted in the facts of that case, which has close resemblance with the facts of the present case. In view of the said judgment dated 10.12.2018, we are also of the opinion that we should not interfere with this matter in exercise of our inherent jurisdiction under Section 482 of the Cr.P.C. to quash the FIR. The contention of learned counsel for respondent no.2 is that the controversy in the matter is fully covered by the Division Bench judgment relied upon by the petitioner. We are unable to agree with the said contention. Careful reading of the judgment indicates that it was held that it is possible that the transaction may be covered under the MPID. However, the judgment does not deliver any final opinion viz-a-viz applicability of MPID to the transaction involved in the said matter. Transaction involved in the present proceeding is also similar in nature. We are of the opinion that the judgment does not foreclose the arguments of the learned Senior Counsel for the applicants that the transaction is not covered by the provisions of MPID. We keep the point

open. The parties may address learned trial Court on this aspect at the appropriate stage.

12. Since we have refrained in view of disputed questions of facts, basically from quashing the FIR with respect to offence under the MPID, we deem it appropriate not to show any indulgence with respect to offences under the IPC sections as well.

13. In the result, the criminal application stands rejected.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/