Judgment

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

CRIMINAL REVISION APPLICATION NO.64 OF 2024

1. Alka w/o Prakash Agrawal,
aged about 59 years,
through POA Shri Vedant Prakash
Agrawal.

2. Prakash Agrawal,
aged about 63 years,
through POA Shri Vedant Prakash
Agrawal.

3. Richa Vedant Agrawal,
aged about 38 years,
through POA Shri Vedant Prakash
Agrawal.

4. Vidushi Agrawal,
aged about 34 years,
through POA Shri Vedant Prakash
Agrawal.

5. Prakash Agrawal HUF,
through Co-parcener Shri Vedant Prakash
Agrawal, aged about 34 years.

applicant Nos.1 to 5 are having residence
at A-6, Ganga Sagar, 83, Canal Road,
Ramdaspeth, Nagpur – 440 010.

6. Rajpad Traders Private Limited,
24/A, Kakurgachi, 2nd Land,
Kolkata-700054.
(through Authorized Representative
Shri Vedant Prakash Agrawal,
Currently residing at A-6, Ganga Sagar,
83, Canal Road, Ramdaspeth,
Nagpur-440010).

7. Mangalkripa Commodities Private Limited
104, PK Saha Lane, Roon No.1,
Kolkata-700036.
Through Authorised Representative
Shri Vedant Prakash Agrawal,
currently residing at A-6, Ganga Sagar,
83, Canal Road, Ramdaspeth,
Nagpur-440010). ..... **Applicants.**

:: V E R S U S ::

1. State of Maharashtra,
through Police Station Officer,
Bajaj Nagar, Nagpur-440010.

2. Mr.Satyajit Sudhakar Wachasundar,
occupation : business,
r/o plot 13, Sneh Nagar,
Yogakshem Layout, Nagpur-440015.
Having its office at 255/4,
Shree Ganesh Chambers,
Laxmi Nagar, WHC Road,

Nagpur-440022.

3. Mr.Hrishikesh Satyajit Wachasundar
occupation : business,
r/o plot no.13, Sneh Nagar,
Yogakshem Layout, Nagpur-440015.
Having its office at 255/4,
Shree Ganesh Chambers,
Laxmi Nagar, WHC Road,
Nagpur-440022.

4. Mrs.Shubhangi Satyajit Wachasundar,
occupation: business,
r/o plot 13, Sneh Nagar,
Yogakshem Layout, Nagpur-440015.
Having its office at 255/4,
Shree Ganesh Chambers,
Laxmi Nagar, WHC Road,
Nagpur-440022.

5. Satyajit Wachasundar HUF,
having its office at 255/4,
Shree Ganesh Chambers,
Laxmi Nagar, WHC Road,
Nagpur-440022.

6. Shubhanji Trades India Private Limited,
Having its office at 255/4,
Shree Ganesh Chambers,
Laxmi Nagar, WHC Road,
Nagpur-440022.

7. Royalblue Resorts (India) Private Limited,

Having its office at 255/4,
Shree Ganesh Chambers
Laxmi Nagpur, WHC Road,
Nagpur-440022. ….. **Non-applicants**.

Shri Sahil Dewani, Counsel for Applicants.
Shri Anant Ghongre, Additional Public Prosecutor for the State.
Shri G.S.Gour, Counsel for NA No.2.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 09/07/2025
PRONOUNCED ON : 14/08/2025

JUDGMENT

1. Heard finally by consent of learned counsel Shri Sahil Dewani for the applicants, learned Additional Public Prosecutor Shri Anant Ghongre for the State, and learned counsel Shri G.S.Gour for non-applicant No.2.

2. The order dated 22.11.2023 passed below Exh.1 by learned Additional Sessions Judge-13, Nagpur in Criminal Misc. Application No.158/2023 is under challenge in the present revision by which the application of the present

applicants under Section 156(3) of the CrPC has been rejected.

3. The applicants have filed Criminal Misc. Application No.158/2023 seeking directions to the concerned police station to register FIR against the accused i.e. non-applicant Nos.2 to 7 under the provisions of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (the MPID Act). The accused persons are engaged in the business of accepting deposits and they promised rate of interest from time to time. As per the allegations in the application, the applicants have paid Rs.2.51 crores to the accused persons during the period from 30.9.2016 to 14.4.2019, on promise to repay the same with interest @ 24% per annum. The accused persons failed to repay the same amount as promised and also committed default in paying

the interest as agreed. Therefore, the applicants approached before learned CJMFC by filing a complaint under section 200 of the CrPC and prayed for directions under Section 156(3) of the CrPC and to register the FIR against the accused persons under Section 3 of the MPID Act and to conduct further investigation so also to issue process against the accused persons for offences punishable under Section 3 of the MPID Act. Before filing the above said application, the applicants have filed Criminal Misc.Application No.369/2022 before learned CJMFC seeking directions to register the offences under Sections 405, 409 and 420 read with 34 of the IPC. Accordingly, by order 28.1.2022, learned CJMFC directed the Sitabuldi Police Station to register FIR against the accused persons. The said order was challenged by the accused persons by preferring Criminal Revision No.35/2022 in which learned Sessions Judge, initially, granted stay and by order dated 4.3.2022 allowed the said criminal revision and set aside the order of learned CJMFC. The said revision was allowed on the ground that the alleged transaction between the applicants and the accused persons is of a civil nature and civil litigation is pending between them for recovery of the said amount.

4. Being aggrieved with said order, the applicants have filed Criminal Application No.404/2022 before this court which was dismissed on 5.4.2022. While dismissing the said application, this court has observed that the offences under Sections 120-B, 405, 406, 409, 420, and 427 of the IPC are not made out. It is further observed the alleged transaction between the parties is of loan transaction and the applicants have received last 3 years interest @ 24% per annum. Thereafter, again the applicants have filed Criminal Misc. Application

No.158/2023 before learned Additional Sessions Judge contending that the amount given to the accused persons comes under the definition of “deposit” given under Section 2(c) of the MPID Act during the period from 30.9.2016 to 14.4.2019 on promise to repay the same along with the interest. However, the accused persons failed to repay the amount. However, the said application is rejected by learned Sessions Judge by observing that earlier Criminal Revision No.35/2022 is dismissed by learned Sessions Judge and Criminal Application No.404/2022 is rejected by this court by observing that the alleged dispute is of a civil nature.

Hence, the present revision is preferred.

5. Learned counsel for the applicants submitted that the amounts deposited by the applicants with the accused persons are within the purview of definition of “deposit”

given under Section 2(c) of the MPID Act. Therefore, the complaint was filed and the transaction would come under the purview of Section 2(c) and, therefore, the provisions of the MPID Act are attracted. Learned Sessions Judge failed to appreciate the specific allegations levelled against the accused persons and erroneously observed that there was no dispute regarding “deposit” of money as well as interest on the said amount. It is well settled position of law that the amounts deposited to include not only any receipt of money but also the acceptance of any valuable commodity by financial establishment under any scheme of arrangement and thus the amounts deposited with the accused persons come under the purview of Section 2(c) of the MPID Act . The amounts are not repaid by the accused persons as agreed and thereby they have committed the offence under Section 3 of the MPID Act and, therefore, directions be issued to the concerned police station to register the offence by invoking Section 3 of the MPID Act.

6. In support of his contentions, learned counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of **State of Maharashtra vs. 63 Moons Technologies Limited, reported in (2022)9 SCC 457.**

7. *Per contra*, learned Additional Public Prosecutor for the State supported the order impugned in the present revision.

8. Learned counsel Shri G.S.Gour for non-applicant No.2 canvassed that in earlier litigation not only learned Sessions Judge, while deciding Criminal Revision No.35/2022, but also this court, while deciding Criminal Application No.404/2022, dealt with this aspect and specifically observed that the alleged transaction between

parties is loan transaction and dismissed/rejected the said application and the revision. It is pertinent to note that the applicants have again filed Criminal Misc. Application No.158/2023 before learned Sessions Judge and learned Sessions Judge rightly held that *prima facie* record shows that nature of the alleged transaction is loan transaction. The applicant have issued notice to accused persons for recovery of the amounts and the accused persons have issued cheque in favour of applicants. The civil suit is already filed by the applicants against the accused persons. Thus, in earlier round of litigation, this court has confirmed order dated 4.3.2022 passed by learned Sessions Judge in Criminal Revision No.35/2022. Thus, the alleged transaction is of a civil nature and the application is filed under the provisions of MPID Act. The said transaction is not within the scope of "deposit" in view of the definition of Section 2(c) of the MPID Act.

The applicants have also filed an application/complaint on 13.5.2021 before the Commissioner of Police, Nagpur City, which was forwarded to the Economic Offence Wing under communication dated 3.6.2021. Accordingly, an enquiry was conducted by the EOW. During the enquiry, statements of the applicants and the accused persons were recorded. During the enquiry, it was found that out of business transactions, the amounts were invested by way of loan. Initially, the accused persons have paid the interest. Thus, the transaction is in the nature of loan transaction and, therefore, the same does not come within the purview of Section 2(c) of the MPID Act.

9. On hearing both the sides and perusing the record available, it is undisputed fact that there was business transaction between the applicants and the accused persons. The applicants paid amount Rs.2.51 Crores to

the accused persons during the period from 30.9.2016 to 14.4.2019 on interest @ 24% per annum. Initially, for three years, the accused persons paid interest. Subsequently, the interest was not paid and, therefore, notice was issued by the applicants to the M/s.Shubhangi Traders India Private Limited and Shri Satyajit Sudhakar Wachasundar, the non-applicant No.2. The said notice is replied by non-applicant No.2 and his firm. It is also undisputed fact that applicant No.2 Prakash Agrawal filed summary suit under Order XXXVII of the CPC for recovery of the amount, which is pending. It is also undisputed that initially the applicants have filed application under Section 156(3) of the CrPC bearing Criminal Misc.Application No.369/2022 before learned CJMFC seeking directions to register the offences under Sections 405, 409 and 420 read with 34 of the IPC. Accordingly, by order 28.1.2022, learned CJMFC directed the Sitabuldi

Police Station to register FIR against the accused persons. The said order was challenged by the accused persons by preferring Criminal Revision No.35/2022 in which learned Sessions Judge, initially, granted stay and by order dated 4.3.2022 allowed the said criminal revision and set aside the order of learned CJMFC. Being aggrieved with said order, the applicants have filed Criminal Application No.404/2022 before this court which was dismissed on 5.4.2022. While dismissing the said application, this court has observed that the offences under Sections 120-B, 405, 406, 409, 420, and 427 of the IPC are not made out. It is further observed the alleged transaction between the parties is of loan transaction.

10. Now, the present revision is filed against rejection of another application filed before the Special Court seeking directions to the concerned police station to

register FIR against the accused persons under the provisions of the MPID Act.

11. Before entering into the merits of the petition, I find it appropriate to reiterate the law laid down by the Constitution Bench of the Hon'ble Apex Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1**, wherein Hon'ble Apex Court observed that although Section 154 CrPC postulates the mandatory registration of FIRs on receipt of information as to all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in

the complaint. In the context of offences relating to corruption, the Supreme Court has also expressed the need for a preliminary inquiry before proceeding against public servants. Thus, the law can be summarized as follows:

> i) Registration of FIR is mandatory under Section 154 CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
>
> iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering a FIR if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
a) Matrimonial disputes/family disputes
b) Commercial offences
c) Medical negligence cases
d) Corruption cases
e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected therein.

12. The law regarding the provisions of the 156(3) is discussed by the Hon'ble Apex Court in **XYZ vs. State of Madhya Pradesh and others, reported in 2022 Live Law SC 676** and held that a Division Bench of this Court in the case of **Sakiri Vasu vs. State of U.P., reported in (2008)2 SCC 409**, expounded upon the Magistrate's powers under Section 156(3) of the CrPC. The Hon'ble Apex Court noted as under:

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

13. The same view was taken by this Court in **Dilawar Singh v. State of Delhi** (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the

Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

> 26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 156 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

It is further held in the judgment referred supra that what is necessary is only that the information given to the Police must disclose a commission of cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

13. Section 2(c) of the said Act provides for definition of the term “deposit”, which reads as under :

> **“2(c)** “deposit” 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 a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include —
>
> > (i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 ;
> >
> > (ii) amounts contributed as capital by partners of a firm;
> >
> > (iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 ;

(iv) any amount received from,—

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

(c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964, or

(d) any other institution that may be specified by the Government in this behalf ;

(v) amounts received in the ordinary course of business by way of,—

(a) security deposit,
(b) dealership deposit,
(c) earnest money,
(d) advance against order for goods or services ;

(vi) 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 ; and

.....25/-

> (vii) any amount received by way of subscriptions in respect of a Chit.
>
> Explanation I.—“Chit” has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982;
>
> Explanation II.— Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause.”

14. Section 2(d) defines “Financial Establishment” means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949.

15. In the light of the above well settled legal position, if the facts of the present case are taken into consideration, it shows that as per allegations by the applicants, the amounts given to the accused persons were deposit, whereas, as per the contentions of the accused persons, it was the loan transaction.

16. Learned counsel for the non-applicant No.2 invited my attention towards the notice issued by the applicants to the non-applicant Nos.2 and 3 and submitted that in paragraph No.2, it is specifically mentioned that "you noticee No.1 assured my client-husband that the said loan would be paid by 31.12.2019 and you noticee would be paying advanced interest @ 24% per annum on quarterly basis," which clearly denotes that the nature of transaction was loan transaction. The said notice is replied by the non-applicant No.2 wherein it is specifically

mentioned that the principle amount has been paid and, therefore, no question of interest arises and denied the liability. Thereafter, applicant No.2 Prakash Agrawal filed summary suit against the accused persons wherein also there is specific contentions that the said amount is paid to the accused persons as a loan amount. Thus, it is crystal clear that the amount paid to the accused persons is not deposit, but it is the loan transaction between the applicants and the accused persons. This fact is appreciated by learned Sessions Judge in Criminal Revision No.35/2022 and by referring the various decisions of the Hon'ble Apex Court, it is held that the documents placed on record *prima facie* show that there was loan transaction between the applicants and the accused persons. The investigating officer of the EOW has also conducted the enquiry and applicant no.1 was intimated that she has not made any investment with the accused persons and the transaction between them is a loan transaction and, therefore, no cognizable offence is made out. The dispute between them is of a civil nature. The said order of learned Sessions Judge passed in Criminal Revision No.35/2022 was subject matter of Criminal Application No.404/2022 filed before this court and this court, after going through the entire record, specifically observed that the moneys were lent by the applicants from time to time on which interest has been received by them @ 24% per annum. The non-applicant Nos.4 to 8 had also issued confirmation of account upto 31.3.2020. The said reason for the complaint shows 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 principle amount. The application under Section 156(3) of the CrPC is based upon identical facts. Applicant No.2 Prakash Agrawal had also filed summary suit under Order XXXVII of the CPC for recovery of the amount against non-applicant Nos.6 and 7. Another suit was also filed by applicant No.4 Vidushi Agrawal against non-applicant Nos.6 and 8. Applicant No.3 Richa Vedant Agrawal had also filed Summary Suit No.9/2022 for recovery of amount Rs.14,28,519/-.

17. Criminal Misc. Application No.158/2023 seeking directions to the concerned police station to register FIR against the accused persons under the provisions of the MPID Act, is based on identical facts, wherein it is alleged that the applicants paid Rs.2.51 Crores to the accused persons during the period from 30.9.2016 to 14.4.2019, on promise to repay the same with interest @ 24% per annum. However, the accused persons failed to repay the

said amount and, therefore, sought directions to be issued to the concerned police station to register the FIR against the accused persons under Section 3 of the MPID Act and to make further investigation. It was further contended that the transaction of amount paid to the accused persons covers under the definition of “deposit” defined under Section 2(c) of the MPID Act. It is further contended that the accused persons come under the definition of financial establishment. Thus, the application filed under Section 156(3) of the CrPC and present revision are based on identical contention. In the earlier application, the allegations were levelled against the accused persons for committing the offence that they have dishonestly misappropriated the properties and converted the same to their own use. In Criminal Application No.404/2022, the finding was given by this court that the entire origin of the dispute emanates from the investment made by the accused persons and, therefore, could not continue an offence under Section 405 and 420 of the IPC. It is specifically held that it was the loan transaction and does not disclose any intention to cheat or breach of trust or any fabrication of account. With the similar contention, again the application was filed seeking directions to register offence under Section 3 of the MPID Act.

18. In the light of the facts of the case, if the nature of the transaction is taken into consideration, the earlier notices issued by the applicants to the accused persons also disclose that there was loan transaction between the applicants and the accused persons. The recital of the said notices sufficiently shows that it is specifically mentioned in the said notices the amounts were paid towards loan and demand was made to repay the said

amount. Even, the contentions in the civil suit filed by applicant No.2 also disclose that the amount was paid towards loan and it was agreed that the said loan would be repaid by 31.12.2019.

19. Thus, as far as the contention that the amounts paid by the applicants to the accused persons are deposited, is contradicted by their own documents. After considering the allegations levelled against the accused persons, it reveals that the transaction between them was in the nature of the loan transaction. The definitions of 'deposit' and 'financial establishments' are rather expansive. The inclusive definition of 'deposit' covers any receipt of money or acceptance of any valuable commodity, except those amounts which have been specifically excluded by sub-clauses (i) to (vii) thereof. Likewise, any person accepting deposits under any

scheme or in any other manner satisfies the description of financial establishment except a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under the Banking Regulation Act.

20. The expression “deposit” is broad in its width. The statutory definition of the expression “deposit” comprises of the following ingredients:

> (i) Any receipt of money or the acceptance of a valuable commodity by a financial establishment;
>
> (ii) Such acceptance ought to be subject to the money or commodity being required to be returned after a specified period or otherwise; and
>
> (iii) The return of the money or commodity may be in cash, 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.

21. These elements of the definition are followed by specific exclusions contemplated in clauses (i) to (vii).

22. Section 3 of the MPID Act envisages punishment for fraudulent default by financial establishment. The said Section is reproduced for reference, as under:

> "**3. Fraudulent default by Financial Establishment.** Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity alongwith any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partner, director , manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall liable for a fine which may extend to one lac of rupees".

For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently".

23. On considering the definition under the financial establishment, financial Establishment means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949

24. In the present case, there is nothing on record to show that the amounts were obtained by the accused persons under any scheme or floating any scheme or towards deposit. On the contrary, the earlier communication by way of notice given by the applicants to the accused persons shows that it was loan transaction between them. This fact is also appreciated by this court while disposing of Criminal Application No.404/2022.

25. Thus, by no way, it can be held that the accused persons come under the definition of financial establishment. The object of the MPID Act shows that it was enacted to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons. It was enacted to safeguard the interests of common citizen against exploitation by unscrupulous financial establishments. The said object indicated in the Statement of Objects and Reasons of the Act. The beneficial nature of the legislation is to protect the interests of small depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated, the same needs to be kept in mind.

26. Thus, considering the entire facts of the present case, nothing is on record to show that the amounts were accepted as "deposit". The complaint does not disclose any intention to obtain the "deposits" under any Scheme. It is merely a loan transaction between the applicants and the accused persons. Despite the clear finding by learned Sessions Judge in Criminal Revision No.35/2022, which is confirmed by this court Criminal Application No.404/2022, that the transaction between the applicants and the accused persons is in the nature of loan transaction i.e. monies were lent by the applicants to the accused persons from time to time upon which till 31.12.2019 the interest has been received by them @ 24% per annum on quarterly basis for a period of three years. The accused persons also issued a confirmation of account upto 31.3.2020. Subsequently, the accused persons failed to make payment for which the action is

already initiated by issuing notice and by filing the suit. This would clearly indicate that the transaction was pure and simple civil transaction and, therefore, the order passed by learned Sessions Judge, Nagpur calls for no interference. On the contrary, it reveals that despite of the clear finding by this court, as to the nature of the transaction, only to recover money by way of short cut method, the application under Section 156(3) of the CrPC appears to have filed, which is complete abuse of process of law and, therefore, the criminal revision application deserves to be dismissed by imposing heavy costs. Accordingly, the Criminal Revision Application stands **dismissed** with costs of Rs.5.00 lacs. Revision stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

27. At this stage, Learned counsel for the applicants prays for stay to the implementation and execution of this judgment.

28. As already observed, this Court has already considered the nature of the transaction in Criminal Application No.404/2022 that the transaction between the applicants and the accused persons is in the nature of the loan transaction i.e. the money is lent by the applicants to the accused persons from time to time, upon which till 31.12.2019 the interest has been received by them @ 20% per annum on quarterly basis for a period of 3 years. Thereafter, again the application was filed contending that the directions to register the FIR under Section 3 of the MPID Act be issued by filing an application under Section 156(3) of the Cr.P.C. By considering the aspect and the finding earlier given by this court, which was remained unchallenged and attained the finality and with the similar allegation the present revision was filed, which is already dismissed, no

case is made out for grant of stay to the implementation and execution of this order. In view of that, the prayer for grant of stay, is hereby rejected.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede/sd.bhimte !!