Judgment

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

CRIMINAL REVISION APPLICATION NO.238 OF 2022
WITH
CRIMINAL REVISION APPLICATION NO.239 OF 2022

CRIMINAL REVISION APPLICATION NO.238 OF 2022

Rakesh s/o Upendra Singh,
aged about 45 years,
occupation : business,
r/o 43, Welcome Nagar,
Bokhara, Koradi Road, Nagpur,
currently lodged in Central Jail,
Nagpur. ….. **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
Officer-in-charge of Police
Station Jalalkheda, Nagpur,
District (Rural), Nagpur.

2. State of Maharashtra, through
Economic Offences Wing,
Nagpur (Rural), Civil Lines,
Nagpur. ….. **Non-applicants**.

CRIMINAL REVISION APPLICATION NO.239 OF 2022

Nutan w/o Rakesh Singh,
aged about 43 years,

occupation : business,
r/o 43, Welcome Nagar, Bokhara,
Koradi Road, Nagpur, currently
lodged in Central Jail, Nagpur. ….. **Applicant.**

:: **V E R S U S** ::

1. State of Maharashtra, Officer-in-charge of Police Station Jalalkheda, Nagpur, District (Rural), Nagpur.

2. State of Maharashtra, through Economic Offences Wing, Nagpur (Rural), Civil Lines, Nagpur. ….. Non-applicants.

Shri F.T.Mirza, Senior Counsel assisted by Shri M.N.Ali, Advocate for Applicants.
Shri Anant Ghongre, Additional Public Prosecutor for the Non-applicants/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 13/06/2025
PRONOUNCED ON : 23/06/2025

COMMON JUDGMENT

1. Heard learned Senior Counsel Shri F.T.Mirza for applicants and learned Additional Public Prosecutor Shri

Anant Ghongre for the State. **Rule**. Heard finally by consent.

2. By these revisions, applicants have challenged orders dated 13.6.2022 passed by learned Additional Sessions Judge, Nagpur rejecting their applications for discharge in connection with Crime No.304/2018 (Special Case No.539/2020) registered under Sections 120-B; 409; 411; 413; 420; 467; 468; and 471 of the IPC and 3 of the MPID Act below Exhs.36 and 37. By these revisions, applicants are challenging orders only to the extent of discharge of offences under Section 3 of the MPID Act and Sections 411 and 413 of the IPC.

3. Brief facts for disposal of these revisions are as under:

The crime is registered on the basis of a report lodged by Madhukar Vithoba Gaikwad against applicants, who are husband and wife, alleging that they through co-accused Nilesh Dhorpe collected documents i.e. 7/12 Extracts, Aadhar Cards, Voter IDs, and Photographs from agriculturists on pretext of ensuring benefits under the Government Schemes and, thereafter, fraudulently, loan applications were prepared showing said farmers are asking for financial assistance. Applicants Rakesh Singh, represented agriculturists that he and his wife stood as guarantors and prepared 58 fraudulent loan cases. It is also case of the prosecution that while the Scheme envisaged sanctioning loan on security of product stored in godown subject to certificate issued by The National Collateral Management Services Ltd. Company (NCMSL), loans were sanctioned in names of agriculturists who did not supply grain. Thus, as per allegations, in connivance with certain officers of the Corporation Bank and NCMSL, applicants and co-accused succeeded in transferring amount Rs.25,11,68,500/- to accounts of farmers. Both applicants and co-accused, with the help of forged documents, released food grains worth of Rs.17,89,00,500/- from "Jagdamba Godown" from accounts of said farmers. Both amounts were transferred to their accounts and accounts of certain ostensible employees and close relatives of applicant Rakesh Singh. Total amount disbursed fraudulently was to the tune of Rs.51,49,56,057/- and only amount Rs.7,16,20,000/- is recovered.

4. On the basis of the said report, the crime was registered. During investigation, the Investigating Officer recorded statements of various agriculturists and after completion of the investigation, filed chargesheet against accused including applicants.

5. After filing of chargesheet, applicant Rakesh Singh preferred application vide Exh.36 and applicant Nutan Rakesh Singh vide Exh.37 for discharge on ground that applicant Rakesh Singh is Director of company namely "Maa Gouri Poultry Pvt.Ltd" and his wife Nutan Rakesh Singh is owner of "Jagdamba Warehouse Godown". They only stood as guarantors. It is purely a case of non-payment of loans. They have not collected any deposits and there is no promise to agriculturists to pay amounts back to them. The agriculturists obtained loans and they are guarantors to the same. Thus, as far as offences under Sections 3 of the MPID Act and 411 and 413 of the IPC are not applicable and they be discharged from said charges.

6. The said applications were strongly opposed by the State on ground that it is applicant Rakesh Singh who is master mind and his wife and other co-accused, in

connivance with other accused, committed the alleged fraud and misappropriated amount Rs.48,63,36,057/-. From the entire chargesheet, ingredients to constitute the offence under Section 3 of the MPID Act is not made out.

7. After hearing both sides, learned Judge below rejected applications for discharge and hence these revisions.

8. In the light of the aforesaid challenge, I have heard learned Senior Counsel Shri F.T.Mirza for applicants and learned Additional Public Prosecutor Shri Anant Ghongre for the State. With their assistance, I have also perused material on record especially chargesheet.

9. Learned Senior Counsel for applicants submitted that Section 2(c) of the MPID Act defines “deposit”. The entire prosecution case nowhere states that applicants have collected deposits from agriculturists or villagers.

The entire prosecution case states that applicants, through Nilesh Dhorpe, collected various documents from agriculturists on pretext of assisting them to obtain benefits under the Government Scheme and, thereafter, fraudulent loan applications were prepared in names of various agriculturists and amounts obtained by way of loans are transferred to their accounts.

The other allegation is that loans were obtained on the security of the product stored in the godown in connivance with the employees of NCMSL and Corporation Bank. Thus, total amount obtained is Rs.51,49,56,057/- and only amount Rs.7,16,20,000/- is recovered and amount Rs.41,47,60,057/- is yet to be recovered.

He also invited my attention towards objects of enactment of the MPID Act and submitted that the object of the MPID Act is to address mischief of collecting deposits from public mostly from poor strata of the society on false promises. The intention of the MPID Act was never to govern “inter-corporation deposits" or transaction” which forms a class apart by themselves. Thus, application of provisions of the MPID Act itself is erroneous and illegal.

10. *Per contra*, learned Additional Public Prosecutor for the State supported orders impugned in revisions and submitted that fraudulently applicants obtained documents, loans in names of farmers, and misappropriated the same. Thus, an ample material is on record to show involvement of applicants and, therefore, Section 3 of the MPID Act cannot be questioned.

11. Before adverting to merits of the matter, it is necessary to see, what are considerations for considering application for discharge.

12. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

13. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023**, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors, reported**

in (2014) 11 SCC 709 and **The State of Maharashtra vs. Som Nath Thapa, reported in (1996) 4 SCC 659** and **The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC 338,** has held as under:

> "10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of **Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:
>
> > "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True

it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been

> committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

14. Thus, the defence of the accused is not to be looked into at this stage when applications are filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the

charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

15. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the

various decisions, the Hon’ble Apex Court has enumerated the following principles:

> “(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
>
> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
>
> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal

application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros

and cons of the matter and weigh the evidence as if he was conducting a trial.”

16. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure from which following principles emerge:

1. While considering the question of framing the charges under section 227 of the Code, the court has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out: The test to determine prime facie case would depend upon the facts of each case.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

3. The court cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

4. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

5. At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a

charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

6. At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

7. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at

this stage, he is not to see whether the trial will end in conviction or acquittal.

17. As observed earlier, applicants have only challenged application of Sections 3 of the MPID Act and 411 and 413 of the IPC.

18. Before dealing with the challenge, it would be appropriate to note relevant provisions of the MPID Act especially interpretation clause thereof.

19. The clause (c) of Section 2 of the MPID Act defines 'deposit' as under :

> "(c) "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--

(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, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992) ;

(ii) amounts contributed as capital by partners of a film;

(iii) amounts received from a Scheduled bank or Shraddha Talekar PS Co-operative Bank or any other banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(iv) any amount received from--

(a) the Industrial Development Bank of India;

(b) a State Financial Institution;

(c) any financial institution specified in or under section 6-A of Industrial Development Bank of India Act, 1964 (18 of 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; and

(c) earnest money;

(vi) any amount received from an individual or a firm or an association or 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

.....23/-

(vii) any amount received by way of subscriptions in receipt of a Chit.

Explanation I -- "Chit" has the meaning as assigned to in clause (b) of Section 2 of the Chit Funds Act, 1982 (40 of 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 a deposit for the purposes of this clause."

Whereas clause (d) of Section 2 defines "Financial Establishment" as:

"(d) 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 defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)."

20. Thus, definitions of 'deposit' and 'financial establishment' 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. Thus, 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.

21. In the present case, it is nobody's case that applicants are running any "financial establishment" and

they have collected “deposits”, but it is case that they have misrepresented agriculturists, collected documents from them, obtained loans in their names, and loan amounts are misappropriated by them.

22. Thus, the entire controversy revolves around question as to whether loans’ amounts obtained by applicants in names various agriculturists are within the definition of “deposit.

23. The Hon’ble Apex Court, in the case of **State of Maharashtra vs. 63 Moon Technologies Limited, reported in (2022)9 SCC 457,** dealt with the scope and ambit of “deposit” and “financial establishment” and held as under:

> “(i) the expression 'deposit' is conspicuously broad in its width and ambit for it includes, not only any receipt of money but also the acceptance of any valuable commodity by a financial establishment under any scheme or arrangement;

(ii) the money or commodity must be liable to be returned. However, such return need not necessarily be in the form of cash or kind but also in the form of a service, with or without any benefit such as interest;

(iii) it is not necessary that the return should be with the benefit of interest, bonus or profit. Therefore, if the financial establishment is obligated to return the deposit without any increments, it shall still fall within the purview of Section 2(c) of the MPID Act, provided that the deposit does not fall within any of the exceptions;
(iv) the phrase 'valuable commodity' cannot be restricted to only mean precious metals. Agricultural commodities which NSEL trades in will fall within the purview of the term, and

(v) the definition is broadly worded to include even the possession of the commodities for a limited purpose."

24. Thus, The expression 'deposit' is conspicuously broad in its width and ambit for it includes, not only any receipt of money but also the acceptance of any valuable commodity by a financial establishment under any scheme or arrangement. The expression ‘any’ is used in the substantive part of the definition of the expression 'deposit' on five occasions namely;

(i) Any receipt of money;
(ii) Any valuable commodities;
(iii) By any financial establishment;
(iv) With or without any benefit; and
(v) In any other form.

The Hon’ble Apex Court further explains that there is nothing in the definition of the term “deposit” to mean that the acceptance of the commodity should be accompanied by a transfer of title to the commodity. Even if the financial establishment is only in “custody” of the commodity, it would still fall within the purview of the phrase “acceptance of commodity”.

25. According to the second ingredient of Section 2(c), the money or commodity must be liable to be returned. However, such return need not necessarily be in the form of cash or kind but also in the form of a service, with or without any benefit such as interest. It needs to be recalled that clause (v) of Section2(c) states that a deposit of money or commodity made as a security deposit, dealership deposit or an advance amount is excluded from the definition of the phrase “deposit”.

26. On going through the entire record and investigation papers, the prosecution case, on the basis of statements of witnesses, revolves around facts that applicants along with co-accused obtained loans in names of farmers and said loan amounts were transferred in

accounts of said farmers and from accounts of farmers transferred said amounts to the accounts of "Maa Gouri Poultry Pvt.Ltd" and "Annapurna Trading Company" and 64 proprietary concerns. These proprietary concerns are in the name of applicant Rakesh Singh and his close relatives.

27. Thus, the entire investigation papers show that amounts are obtained by way of loans in names of farmers. Thus, loans advanced in names of farmers, which are required to be repaid to the concerned bank, would not amount to "deposit" within the meaning and for the purpose of the MPID Act.

28. The object of the aforesaid enactment was clarified by the Hon'ble Apex Court in the case of **M/s.New Horizon Sugar Mills Ltd. vs. Government of Pondicherry, thr.Additional Secretary and anr, reported in (2012)10**

SCC 575 and it has been observed that the object of this enactment is namely to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust. The said enactment 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 and who ultimately betrayed their trust that was stated to be the main object indicated in the statement of object and reason of the enactment. The nature of 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 which needs to be kept in mind while testing the provisions of the said Act.

29. In the aforesaid view of the matter, loans obtained by applicants in names of farmers would not amount to “deposit” within the meaning and for the purposes of the said Act.

30. Even, the definition of “financial establishment” as defined in Section 2(d) defines, “as any person accepting a deposit”.

31. On going through the definition of “financial establishment”, admittedly, applicants are not fit in the definition of “financial establishment” and, therefore, the contention of learned Senior Counsel for applicants requires to be accepted that amounts obtained by applicants, allegedly by obtaining loans in names of farmers, does not come within the definition of “deposit” and applicant also are not covered under the definition of “financial establishment”.

32. Learned Senior Counsel for applicants also challenged the charge under Sections 411 and 413 of the IPC.

33. Section 411 of the IPC deals with offence of "dishonestly receiving or retaining stolen property" which reads as under:

> "whoever dishonestly received any stolen property, defined under Section 410 of the IPC, dishonestly receiving the same is guilty of the offence under Section 411 of the IPC".

34. Here, in the present case, there is absolutely no allegation against applicants that they have received stolen property and, therefore, application of Section 411 of the IPC itself is erroneous.

Similarly, Section 413 of the IPC deals with "offence of habitually dealing in stolen property". The same is also not applicable as the entire chargesheet nowhere reveals that applicants, at any point of time, habitually received or dealt in property which they know or have reason to believe to be stolen property.

35. A plain reading of Sections 411 and 413 of the IPC and applying the undisputed facts to the present case indicates that none of ingredients are attracted to the case in hand.

36. After having sifted and weighed the evidence on record; on going through investigation papers, and considered materials on record, it is difficult to hold that Section 3 of the MPID Act is attracted against applicants as allegations levelled against them are that they obtained money in names of farmers by obtaining loans and transferred in their accounts and siphoned the same to accounts of their firms which does not come within the

definition of “deposits”. On the basis of the evidence on record, it cannot be stated that the material is sufficient for the prosecution to establish the charge against the applicants under Section 3 of the MPID Act.

Likewise, the charge under Sections 411 and 413 of the IPC also appears to be erroneous as there is no allegation that applicants either received any stolen property or dealt with the stolen property and, therefore, as far as offences under Section 3 of the MPID Act and Sections 411 and 413 of the IPC are not made out. As such, subjecting applicants to face trial for the above said offences would be abuse of process of law. Learned Judge below ought to have appreciated this legal position while deciding applications for discharge. I am, therefore, of the view that orders impugned are liable to be quashed and set aside to the extent of application of Section 3 of the MPID Act and Sections 411 and 413 of the IPC.

37. In this view of the matter, the criminal revision applications deserve to be allowed partly. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Revision Applications are **allowed partly**.

(2) The orders dated 13.6.2022 passed by learned Additional Sessions Judge, Nagpur rejecting applications of applicants for discharge in connection with Crime No.304/2018 (Special Case No.539/2020) below Exhs.36 and 37 are hereby quashed and set aside only to the extent of offences under Section 3 of the MPID Act and under Sections 411 and 413 of the IPC.

.....36/-

(3) The applicants are hereby discharged of offences under Section 3 of the MPID Act and under Sections 411 and 413 of the IPC.

38. Rule is made absolute in the aforesaid terms.

Revisions stand **disposed of** accordingly.

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

!! BrWankhede !!