
(2022) 10 BOM CK 0127

In the Bombay High Court

Case No : Criminal Writ Petition No.108 Of 2021

Ajay

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 36, 154, 154(3), 156(3), 162, 482
Negotiable Instruments Act, 1881 — Section 138
Indian Penal Code, 1860 — Section 406, 420
Banking Regulation Act, 1949 — Section 5, 5(c)
Industrial Development Bank Of India Act, 1964 — Section 6A
Chit Funds Act, 1982 — Section 2(b), 2(d)
Maharashtra Protection Of Interest Of Depositors (In Financial Establishments) Act,
1999 — Section 2(c), 2(d), 3, 4, 5, 6, 7, 8, 9, 10

Citation : (2022) 10 BOM CK 0127

Hon'ble Judges : A.S. Chandurkar, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : A.S. Mardikar, Rishab Khemuka, S.S. Jachak, Sunil Manohar, Jatin Kumar

Final Decision : Dismissed

Judgement

Urmila Joshi-Phalke, J

1. The petitioner by invoking jurisdiction under Articles 226 and 227 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure seeks quashment of the order passed by the learned Additional Sessions Judge, Amravati directing the Police Station Officer/Authorized Officer, Rajapeth Police Station to submit report under Section 156(3) of the Criminal Procedure Code, 1973 after proper investigation.

2. The petitioner and the respondent No.2 both are permanent residents of Amravati and acquainted with each other. As per the contention of the petitioner in the year 2017 his mother was suffering from heart disease, therefore, he was

in need of financial assistance. The petitioner requested respondent No.2 for hand-loan of Rs.10,00,000/- for the purpose of medical treatment of his mother. Accordingly, as per request respondent No.2 gave hand-loan of Rs.10,00,000/- to the petitioner and obtained written note i.e. Jama-Chitthi on the letter-pad of the petitioner. The petitioner had issued cheque bearing No.851719 of IndusInd Bank to the respondent No.2 by way of security. As per the contention of the petitioner the alleged transaction had taken place in the presence of Shri Virbhan Zambani. It is further contention of the petitioner that he could not repay the amount due to business problems as agreed by him. The respondent No.2 deposited the said cheque for clearance but it was returned with endorsement "Funds Insufficient" on 13.8.2020. As the cheque issued by the petitioner was not encashed, respondent No.2 issued notice to the petitioner on 17.8.2020. As per the petitioner, respondent No.2 had not mentioned real transaction in the said notice. The respondent No.2 again issued a notice dated 4.9.2020 asking the petitioner to refund amount within three days otherwise she would take legal action against him under the provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as, "the MPID Act, 1999". Thereafter respondent No.2 approached the Police for taking action against the petitioner but the Police did not register the offence, therefore, petitioner preferred application seeking relief under Section 156(3) of the Cr.P.C. before the learned Additional Sessions Judge, Amravati bearing Misc. Criminal Application No.95/2020. The respondent No.2 had also filed Misc. Criminal Application No.132/2020 for seeking direction to the Police to register offence against petitioner. Said application was allowed by the learned Additional Sessions Judge by directing the Police Station Officer to conduct the investigation and submit the report.

3. Being aggrieved with the said order present writ petition is filed by the petitioner on the ground that the learned Additional Sessions Judge had not considered that it is the transaction of hand-loan and at the most case of the petitioner is covered under Section 138 of the Negotiable Instruments Act, 1881. The order passed by the Additional Sessions Judge is illegal and liable to be set aside.

4. In response to the notice the respondent No.2 submitted that the petition is without substance, malicious and liable to be dismissed. As per the contention of the respondent No.2 the petitioner had represented to the people of Amravati and its adjacent district that he is an accomplished land developer and has several upcoming layouts project in Amravati district. He further represented that he would be converting huge portion of the land into layouts which are adjacent to upcoming road development project to attract several people into opening deposit account. He promised that money deposited would be used by him for development project and that the deposit scheme would yield higher rate of returns and thereby the petitioner willfully made a deposit scheme lucrative. The petitioner had also promised a monthly return of 1.8% which was payable after every four months to the concerned depositors. On the basis of assurances and

promises rendered by the petitioner, the respondent No.2 deposited the amount of Rs.10,00,000/- with the petitioner through cheque No.000011 drawn on HDFC Bank dated 7.9.2017. The said cheque was sent to the petitioner through Shri Virbhan Totaram Zambani. The cheque was duly encashed by the petitioner and issued a Jama-Chitthi or deposit note to the respondent No.2. The petitioner as per the assurance had not paid any amount to the respondent No.2. He only remitted sum of Rs.1,98,000/- in discharge of his obligation against the deposit note. The petitioner in contravention of the deposit note started making defaults in repayment to the respondent. Therefore, the respondent presented the cheque bearing No.851719 on 10.8.2020 for encashment. However, said cheque was dishonoured by the petitioner Bank on 13.8.2020 and returned with endorsement "Funds Insufficient". Therefore, the respondent No.2 had issued the notice. After receipt of the notice also petitioner had not repaid the amount. Therefore, she approached the Police on 7.9.2020 and filed the complaint against the petitioner as the Police did not take action he approached to the Special Court, Additional Sessions Judge, Amravati for seeking direction to register the F.I.R. against the petitioner under Section 156(3) of the CrPC. He supported the order passed by the learned Additional Sessions Judge, Amravati.

5. By an order dated 19.1.2021 the Special Judge found that from the averments made in the application as well as perusal of the deposit note dated 7.9.2017 that the petitioner had accepted deposit from the applicant as contemplated under Section 2(c) of the MPID Act, 1999. Further, from the averments made in the application and the endorsement made on the deposit note dated 7.9.2017 (which is encircled in red and marked 'X' for identification), it appeared that the petitioner had assured the respondent No.2 that she would get quarterly returns at 1.80% on the amount deposited. In fact, perusal of the statement of the account of the respondent No.2 showed that during the period 30.1.2018 to 13.11.2019 she has received regular interest on the amount given by her to the petitioner and thereafter the petitioner stopped making payment of the quarterly returns. Thus, prima facie it appears that the respondent No.2 was cheated. It is further observed by the Special Court that the question was whether the non-applicant No.1 is running a "Financial Establishment" within the meaning of Section 2(d) of the MPID Act, 1999. In this regard, it may be stated that the respondent No.2 had not given the names of other persons, who had deposited amount with the petitioner. It prima facie appeared that the petitioner was accepting money under some scheme or arrangement and that he defaulted in making payment of the returns to the respondent No.2 and for that purpose investigation would be necessary.

6. The order of the Special Court was questioned by the petitioner under Section 482 of the CrPC. We have heard learned Senior Advocate Shri A.S. Mardikar with Shri Rishab Khemuka, Advocate for the petitioner and Senior Advocate Shri Sunil Manohar with Shri Jatin Kumar for the respondent No.2 and learned Additional Public Prosecutor Smt. S.S. Jachak for the respondent No.1.

7. Before entering into the merits of the petition we 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.

8. 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, decision in Criminal Appeal No.1184/2022, 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 :

"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 36 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 Section 482 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?"

9. 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.

10. In the light of the abovesaid well settled legal position the facts of the present case are to be ascertained. The respondent No.2 had filed written complaint before the Police alleging that the present petitioner represented to the general public and a broker that he is developer of layouts in the Amravati district. The petitioner assured the general public that if any amount is deposited with him he would use the said amount for developing layouts and ensure that the investor would get return at 1.50% to 1.80% per month on the amount deposited. It is further alleged by the respondent No.2 that relying upon the assurance given by the non-applicant No.1 she gave Rs.10,00,000/- to him vide cheque bearing No.000011, dated 7.9.2017 drawn on the HDFC Bank through broker of the petitioner, namely, Virbhan Totaram Zambani. The petitioner had

issued the deposit note dated 7.9.2017 to the respondent No.2 acknowledging that he had received the above mentioned amount. According to the respondent No.2, the petitioner assured to give returns at 1.80% after every four months and he made the necessary endorsement to that effect on the deposit note. As per the contention of the respondent No.2 she was entitled to get amount of Rs.2,88,000/- towards returns as on 1.8.2020. On making inquiry the petitioner gave the cheque of Rs.10,00,000/- bearing No.851719 drawn on IndusInd Bank, Amravati to the respondent towards discharge of his liability. The respondent No.2 deposited the said cheque in the Bank on 10.8.2020 and the same was returned with remark "Funds Insufficient". The respondent No.2 came to know that the petitioner had obtained huge amounts from various persons and then not repaid the said amount. Consequently on 17.8.2020 the respondent No.2 issued statutory notice under Section 138 of the Negotiable Instruments Act. As per the respondent No.2 the petitioner had committed the offence under Sections 406 and 420 of the Indian Penal Code and under Section 3 of the MPID Act. Though she lodged the report but Police have not taken any cognizance and therefore the respondent No.2 filed complaint with the Commissioner of Police, Amravati on 24.9.2020.

After filing the complaint with the Commissioner of Police also no cognizance was taken and therefore she approached to the Court.

11. The specific allegations made by the respondent No.2 against the petitioner is that by representing himself as a developer of lay-outs petitioner had obtained amount of Rs.10,00,000/- as a deposit with an assurance that the respondent No.2 would receive returns at the rate of 1.80% after every four months. Initially the petitioner had received only Rs.1,98,000/-. She was entitled to receive Rs.2,88,000/- towards the returns as on 1.8.2020. As per the contention of the respondent No.2 as the amount was accepted as a deposit and not paid the returns on the deposit amount therefore, provisions under the MPID Act, 1999 are attracted. Admittedly, the MPID Act, 1999 has been enacted to protect the interest of depositors in the financial establishments and matters relating thereto. The statement of objects and reasons of the enactment shows that sole object of these establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return. Many of these financial establishments have defaulted to return the deposit on maturity or to be interest or render services in kind in return as assured to the public and therefore the Government of Maharashtra satisfied that in the above circumstances it is necessary to take immediate action to make a law for the purposes aforesaid, accordingly this ordinance is promulgated.

12. 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

(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 ;

13. 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.

14. After considering the allegations made by the respondent No.2 it is apparent that the respondent No.2 had deposited Rs.10,00,000/- with the petitioner and petitioner had assured that he would give quarterly returns at 1.80%. However, he failed to give assured returns and accordingly he issued the cheque of Rs.10,00,000/- drawn on IndusInd Bank. It is not in dispute that the petitioner had issued the cheque for Rs.10,00,000/- in favour of the respondent No.2. Said cheque was deposited by the respondent No.2 and it was returned with endorsement "Funds Insufficient". As per the contention of the petitioner he has obtained the hand-loan as he was in need of financial assistance for the treatment of his mother and the cheque which was in question was given by him to the respondent No.2 by way of security. As per his contention the transaction between him and respondent No.2 is of hand-loan transaction and the said cheque was issued by way of security. Due to the financial crisis in business he could not pay the amount and respondent No.2 had deposited the said cheque which was returned with endorsement "Funds Insufficient" on 13.8.2020. The notice was also issued by the respondent No.2 on 17.8.2020 and another notice was issued on 4.9.2020. It is submitted by the learned Senior Advocate Shri A.S. Mardikar that the transaction between the petitioner and the respondent No.2 is only to the extent of hand-loan and the cheque was issued against liability. The said cheque was issued as towards a discharge of debt and no offence is made out under the provisions of Section 3 to 10 of the MPID Act. He further submitted that the Special Court had not considered the same and wrongly observed that the provisions of the MPID Act are attracted and wrongly issued the directions of investigation. In support of his contention he relied upon T.T. Antony vs. State of Kerala and others, reported in (2001) 6 SCC 181, wherein Hon'ble Apex Court had considered the question whether there can be a second F.I.R. It is held by the Hon'ble Apex Court in the said judgment that only information about commission of a cognizable offence which is first entered in station house diary by officer in charge of the police station can be regarded as FIR under Section 154 – All such subsequent information will be covered by Section 162 – Officer in charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction. He further relied upon Ashish Mahendrakar vs. State of Maharashtra and others, reported in 2019 SCC OnLine Bom 1865, wherein a question of seminal importance is raised under Article 226 of Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, namely, whether the inter-corporate deposit/loan, i.e., a loan advanced/deposit made by a company with another company registered under the provisions of the Companies Act, 1956 would amount to a "deposit" within the meaning and for the purpose of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 was involved.

15. After giving consideration to the averments made by the respondent No.2 in the complaint and the submission made by the petitioner, which is apparent that the deposit note dated 7.9.2017 was issued by the petitioner. Prima facie, the recitals of the deposit note indicate that the petitioner had accepted the amount from the respondent No.2. The recitals of the said deposit note shows that it is named as Jama-Chitthi. At the left hand corner of the said deposit note 1.50 + 0.30 = 1.80 and 4 months is written which according to the respondent No.2 is the assurance given by the petitioner. Said deposit note is written on the letter-pad of the petitioner. At the stage of giving direction regarding investigation prima facie case is to be established. It appears from the said deposit note that the petitioner had assured the respondent No.2 that he would give quarterly returns at 1.80% on the amount deposited. In fact the perusal of the statements of the account of the respondent No.2 shows that during the period from 30.1.2018 to 13.11.2019 respondent No.2 had received regular interest on the amount given by her to the petitioner. Learned Senior Advocate Shri Sunil Manohar rightly pointed out that the observations made by the Sessions Judge in the order specifically state that from the deposit note it is apparent that the petitioner had assured respondent No.2 that he would give quarterly returns at 1.80% which is also reflected in the deposit note. He further submitted that the definition of the financial establishment includes an individual. He invited our attention towards the definition of financial establishment, wherein it is stipulated that the financial establishment means any person accepting deposit under any scheme or arrangement or in any other manner, thus any person is included in the definition of financial establishment. It only excludes a corporation or a co-operative society or Banking Company which are defined under clause (c) of Section 5 of the Banking Regulation Act. The material on record sufficiently shows that respondent No.2 had deposited Rs.10,00,000/- as petitioner assured about the returns and respondent No.2 had also received the returns for the period 30.1.2018 to 13.11.2019 which is reflected in the statement of account of the petitioner. Therefore, the contention of the petitioner that it was out and out hand-loan transaction and the cheque was issued against the said hand-loan transaction cannot be accepted at this preliminary stage. The decisions on which petitioner relied are not applicable in the present case, as in the cited case facts of the case shows that when a Minister had sought to inaugurate a Cooperative Bank, violent demonstrations were staged by the members of the youth wing. Two offences were registered regarding the said incident. Thereafter inquiry was initiated and Executive Magistrate submitted a report to the District Collector. The District Collector informed the Commissioner and Secretary to the Government and directions were given to register the FIR. In view of abovesaid facts, the observation was made by the Hon'ble Apex Court that all such subsequent information will be covered by Section 162 of the CrPC. In the said judgment the Hon'ble Apex Court had also discussed the scope of Section 154 of the CrPC.

16. The another judgment on which the petitioner relied upon is the Ashish

Mahendrakar vs. State of Maharashtra and others (supra) in which this Court discussed the scope of definition of deposit and financial establishment and held that the definition 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 (v) to (vii) thereof likewise, any person accepting deposits under any scheme or any other manner satisfies the description of financial establishment. Thus, any person means an individual is included in the definition of financial establishment. In this backdrop and in the light of well settled legal position, Section 156(3) CrPC includes power to order the registration of a FIR by directing proper investigation if the Magistrate is satisfied that proper investigation has not been done or is not being done by the Police. Section 156(3) CrPC has a wide scope and includes all such incidental powers which are necessary for proper investigation.

17. In the present case, the facts which are on record makes it clear that upon the invocation of the jurisdiction of the Magistrate under Section 156(3) of CrPC the Special Judge came to the conclusion that the allegations which are levelled against the petitioner by the respondent No.2 and the supporting documents in this regard, the statements of complainant were satisfactory. After taking note of the fact that the Police at an earlier stage had not taken the cognizance the Special Judge opined that from the facts on record brought by the complainant through the complaint prima facie occurrence of an offence has made out. Therefore, in such cases where prima facie the learned Special Judge has found the commission of a cognizable offence alleged on reading of a complaint and on the basis of documents the need for police investigation is found, then the discretion granted in Section 156(3) needs to be exercised. The learned Special Judge had exercised the said discretion. There is not only the statement of the complainant but the documentary evidence which is in physical possession of the respondent No.2 sufficiently shows that prima facie the offence is made warranting investigation. The allegations made by the respondent No.2 and the documents on record clearly shows that the respondent No.2 had deposited the amount of Rs.10,00,000/-, petitioner had assured the return at 1.80%. The note of deposit also shows that there was an agreement to give return at the rate of Rs.1.80% to the respondent No.2. The respondent No.2 had received the returns for certain period and thereafter the petitioner had made default. In view of all the circumstances and the amount deposited by the respondent No.2 which petitioner could not return, we hold that no interference with the impugned order is called for. The directions given by the learned Special Judge are as per the legal provisions and within the scope of Section 156(3) of CrPC. In the result, the writ petition has no merit and liable to be dismissed. Hence, we proceed to pass following order :

ORDER

(i) The Writ Petition is dismissed.

(ii) It is however clarified that the observations made are only for consideration of the challenge as raised to the impugned order and shall not be construed as expression of any opinion on merits.

(iii) In view of prayer clause (ii), interim relief is extended upto four weeks.

18. Rule is discharged. No costs.