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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(CRL) 2754/2015**

ADITYA BIRLA MONEY LTD. & ORS. ..... Petitioners

Through: Mr. Sundeep Srivastava and Mr. Yuvraj Mishra, Advocates.

Versus

STATE & ORS. ..... Respondents

Through: Mr. Ashish Negi, Advocate for Ms. Richa Kapoor, Additional Standing Counsel (Crl.) for State with SI Sangit Tiwari, P.S. Preet Vihar.
Mr. Akshat Goel, Advocate for Respondent No.2.
Mr. Pranav Rishi, Advocate for Respondent No.3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 01.11.2017

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioners seek quashing of FIR No.580/2015, registered at Police Station Preet Vihar, Delhi, for the offences punishable under Sections 420/34 IPC and the consequential proceedings emanating therefrom against them. The petitioner submits that the complainant had all along participated in each and every transaction and they were undertaken at the complainant's instructions by the petitioners.

2. The FIR, however, does not mention anything against individuals

engaged in the management of the petitioner company, in particular its Directors or the Chief Finance Officer (CFO). The complaint was investigated by the police, and a Closure Report was filed before the Metropolitan Magistrate, Karkardooma Courts, Delhi, on 28.10.2017. The police report concluded as under:-

> "*After going through the transcripts and voice recordings it clearly appears that complainant Shiv Agarwal was aware about the transactions in alleged stocks. Complete transcriptions of the call logs is enclosed for your king perusal and are annexed herewith as ANNEXURE 19 And CD's of voice logs between the complainant Shiv Aggarwal and Rakesh Sharma (ABML) is enclosed herewith as ANNEXURE 20.*
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> *Further during the course of investigation complainant submitted his reply along with the copies of Email and whatsup chat print outs alongwith other document. In the copies of email it came to know that on dated 14 July 2014, 16 July 2014, 18 July 2014, 24 July 2014, 19 August 2014, emails were sent to Aditya Birla Money Ltd. by the complainant and the following points were raised by him.*
>
> *1) Email dated 14 July 2014 :- Issue raised was only margin Shortfall in his account. Which shows that complainant was fully aware of his trading account and he no where raised the issue of alleged disputed shares or illegal trading conducted in the account.*
>
> *discussion around Market & trades. In this call SCCHealth confirmation is available too.*
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> *9) <u>Call of 5th Aug @ 11.49 AM</u> – Market & trade related discussion. Then SA asks Rakesh as to what he is doing for Jaymal. Rakesh tells him that he will sell them today. SA tells him to sell as the rate now is Rs. 3.41. Then there is a discussion around when & how they will sell. Then they*

discussed about SCC. SA says SCC has come down.

10) <u>Call of 7th Aug @ 15.45 PM</u> – day end confirmation call. SA asks whether all the call logs are submitted by branch to this Rakesh says that all the calls can be taken by HO. They discuss about meeting someone today. Rakesh says that confirmation of last two days is pending.

11) <u>Call of 7th August at 17.13 PM</u> –before this call there are 3 calls which SA did not pick up. Day end confirmation call. SCC shares 15 sold. Secure 1 share bought confirmation. Yesterday confirmation is also being given in this same call. SA asked him to give him time so that he takes out his sheet. Confirmation call of 50001 shares of SCC is also included in this confirmation. At the end of the call SA asks Rakesh to call him from Mobile.

12) <u>Call of 8th Aug @ 09.15 AM</u> – Market & trade related discussion. SA is bit tensed about his positions & market. There is a discussion around Jaymal which is on upper circuit on this day as well and also other stock which is up by Rs. 1. Also there is a discussion around Currency losses.

13) <u>Call of 12th Aug @ 16.54 PM</u> – day end confirmation call. Secure sell trading having fully known the risk involved and therefore, cannot be allowed to allege that the trading was unauthorized or that it was carried out without his knowledge and consent. It is submitted that allegation leveled nowhere reveals that there was any initial malafide on the part of the alleged persons to enter into an agreement with the complainant for trading on behalf of the complainant and therefore, are untenable and unsustainable.

B) Furthermore, with respect to the allegation of unauthorized trading it is submitted that the complainant was trading on his own online and any transaction being done in his account was either by him or with his consent and knowledge and therefore no trading can happen unauthorisedly as alleged, it is just *because the complainant started suffering losses that the he is fastening the liability. Whereas no such Complaint were being made at the time when he was making profit in his transactions. It is further stated that the complainant has already taken recourse to the forums available to him with respect to the dispute arising out of trading and has not been successful in any of such forums mentioned above.*

C) In order to make a case under Section 420 IPC as alleged in the FIR two essential ingredients of cheating as defined under Section 415 IPC are required to be made out: (1) To make a false statement so as to deceive any person (2) Fraudulently and dishonestly inducing the person to deliver any property or to do or omit to do something. It is submitted that during investigation no false representation made by the alleged persons in inducing the complainant for opening of the trading account and for trading in the same. Complainant was aware of the transaction made in his trading account.

D) In view of the above facts and circumstances no cognizable offence is made out. Matter is civil in nature and N.B.W issued against the alleged Aporva Jain and Rakesh Sharma dated 7/4/16 may be cancelled as during investigation no evidence came to light against the said person, cancellation report has been prepared for kind perusal."

3. The learned counsel appearing on behalf of the petitioners submits that no case is made out against the petitioners therefore the FIR should be quashed. He contends that in a baseless case the senior management personnel of the petitioner company had been summoned by the Trial Court. They had, as recorded in the police report, no role whatsoever in the transactions done by or on behalf of the complainant, yet they were malafidely accused by the complainant in a false case of fraud. Therefore, not only should the FIR be quashed but additionally the complainant must

be put to terms. He relies upon the dicta of ***Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. (1998) 5 SCC 749***, wherein the Supreme Court held as under:-

> *" Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

4. Since the Police Closure Report itself concludes, after investigation, that the essential element of deception by the accused, so as to induce the complainant to dishonestly or fraudulently part with property, was not found; there was no false representation for the opening of and trading in the share trading account; the complainant was aware of the transactions, therefore, section 420 of the IPC was not attracted and no offence of a cognizable nature was made out. The Report further concluded that the case was of a civil nature and had sought cancellation of the non-bailable warrants issued against two persons, since no evidence against them came about regarding any criminality.

5. It is stated that the matter was pending in the Trial Court and after the summoning order the petitioners have appeared before the said Court on a number of occasions, albeit through counsel for the past few years. Even before this Court, this is the 9th listing of this petition spreading over a period of about two years. This process would have led to litigation and other expenses by the accused and unwarranted harassment to them, but more importantly it led to setting in motion the judicial process in a baseless case. The Court is of the view that such misadventure must entail costs, in the least.

6. Accordingly, the private respondents are directed to deposit costs of Rs.25,000/- in the Delhi High Court Legal Services Authority within two weeks from today.

7. In view of the above, FIR No.580/2015, registered at Police Station Preet Vihar, Delhi, for the offences punishable under Sections 420/34 IPC alongwith and all proceedings emanating therefrom are hereby quashed.

8. The petition stands disposed off in the above terms.

NAJMI WAZIRI, J.

NOVEMBER 01, 2017

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