IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 180 OF 2018

Nutan w/o Rahul Abane ... **Petitioner**
Age 32 years, Occu: Self employed, R/o Gehija Apartment, Samata Nagar, Daund, Pune.

VERSUS

State of Maharashtra … **Respondent**
Through police Station officer Topkhana Police Station, Ahmednagar, Dist. Ahmednagar

Mr. N. V. Gaware, Advocate for the petitioner
Mr. A. P. Basarkar, APP for the Respondent/State

CORAM : K. L. WADANE, J.

RESERVED ON : 4th April, 2018
PRONOUNCED ON : 5th April, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.

2. In the present petition, the petitioner/original accused No.4 has challenged order passed by the learned Additional Sessions Judge, Ahmednagar below Exh.164 in Sessions Case No. 254/2012, by which the application for discharge of the present petitioner is rejected.

3. Brief facts of the case may be stated as follows:

On 22nd May, 2012, the informant Dr. Shaikh Parvej Umar lodged first information report with Topkhana Police Station, Ahmednagar against the present petitioner and other accused persons for the offence punishable under sections 406, 409, 384, 420, 465, 467 read with 34 of the Indian Penal Code so also for the offence punishable under sections 4, 5 and 6 of the Price Chit and Money Circulation Act, 1978 and section 3 of Protection of Interest of Depositors Act, alleging that, in the month of April, 2012, his friend namely Avinash Pawar came across with Mr. Ujagare who gave him information of VSL Pvt. Ltd. He gave details/information with regard to the plan/ scheme of the company and thus, the complainant had visited the office of the Company and accused No.1 Rahul Abane at Daund. It has been alleged that subsequently, on 2nd May, 2012, the informant has deposited an amount of Rs.12,000/- in the scheme, however, subsequently, the aforesaid VSL Pvt. Ltd. Company failed to repay the amount as per assurance alongwith benefits introduced in the scheme. With the aforesaid allegations, the crime is registered against the present petitioner as well as her husband Rahul Abane and other accused persons.

4. Mr. Gaware, the learned counsel appearing for the petitioner submits that the present petitioner is a wife of other accused Rahul Abane. She has nothing to do with the business of the said company. Merely, she is a Director of the said company. She is unaware about the day to day transactions of the company run by accused No.1/her husband. Mr. Gaware, the learned counsel submitted that merely because the present petitioner is one of the Directors, criminal liability cannot be fastened upon her as in the criminal law, there is no concept of vicarious liability. In support of his contention, Mr. Gaware has relied upon the following cases:

(1) 2008 DGLS (SC) 1413, R. Kalyani Vs. Janak C. Mehta and others

(2) 2016 DGLS (SC)1352 HDFC Securities Ltd. And ors. Vs. State of Maharashtra and others

(3) 1998 DGLS (SC) 528, State of haryana Vs. Brijal Mittal.

(4) 2013 DGLS (SC) 921, Tamil Nadu Mercantile bank ltd. Vs. State through Deputy Superintendent of Police and anr.

5. As against this, learned APP Mr. Basarkar has invited my attention to the statement of witnesses particularly, statement of witness Vaibhav Sudame and Dhiraj Daga, recorded by the Investigating Officer during investigation. Witness, Vaibhav Sudame was serving with the aforesaid company at the relevant time on monthly salary and he was directly concerned with the day to day affairs and transactions of the company. He has stated that he used to collect subscription/ money from the members of the company and in the evening accused Rahul Abane used to collect the said money from this witness and whenever accused Rahul Abane was out of town/village, as per instructions of Rahul Abane, the witness used to deposit the collected amount with the wife of Rahul Abane i.e. the present petitioner. The present petitioner is Co-director of the said company and therefore, this witness was depositing the entire amount collected from the members of the company with the present petitioner.

6. Learned APP further invited my attention to the

statement of witness Dhiraj Daga. From the statement of this witness it appears that another accused Rahul Abane has purchased gold for and in the name of the present petitioner out of the amount collected from the members of the company so also he has also purchased Four Wheeler out of the said amount. These statements of this witness indicate that the present petitioner was having knowledge about the day to day affairs/ transactions of the company and not only this, the present petitioner and her husband are the only directors of the company.

7. Looking to the statements of the above two witnesses, it appears that there are reasons to believe that the present petitioner was having knowledge about the transactions of the company. From the circumstances on record, the petitioner must have knowledge about the transactions of the company. Therefore, prima facie, it cannot be said that the present petitioner is not responsible for the act done by the other director of the company.

8. On perusal of the papers of investigation it appears that the aforesaid company has collected huge

amount from its subscribers and failed to give return and benefits of the scheme introduced by the company through its director.

9. In view of the above, there is no substance in the writ petition and the petition is liable to be dismissed and accordingly it is dismissed.

10. Rule is discharged. No costs.

(K. L. WADANE, J.)

JPC