

WRIT PETITION NO. 144 OF 2006

V/s.

The State of Maharashtra and anr. ... Respondent

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Mr. Vivek Kantawala with Ameya Patil, Jash Vyas, Bhairavi Waravdekar, Hetal Jobanputra i/by M/s. Vivek Kantawala and Company for the Petitioner.
Mr. S.S. Hulke, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.
DATE : 04th October, 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India the petitioner/original accused No.3 has prayed for quashment of the proceeding bearing CC No.80/PW/2005 pending on the file of the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai arising out of CR No.73/2004 dated 21.2.2004 registered with MRA Marg Police Station, Mumbai under Sections 406 and 420 of the Indian Penal Code.

2. Heard Mr. Ameya Patil, the learned counsel for the petitioner and the learned APP. Perused the record.

3. The prosecution case in brief is that, the petitioner was Director of M/s. Jayantilal Khandwala and Sons Pvt. Ltd. along with another two Directors. That, for the period from November 2001 to August 2003, though the amount towards the payment of Provident Fund of the employees amounting to Rs.4,51,596/- was deducted by the company, the accused persons did not deposit the same with the Competent Authority, established under the Employees Provident Fund Act and utilized it for their personal benefits thereby committing an offence under Section 406 and 420 of the Indian Penal Code.

4. Mr. Patil, the learned counsel appearing for the petitioner submitted that, the period of alleged defalcation mentioned in the first information report and /or charge sheet is November 2001 to August 2003 and as a matter of fact, the petitioner, original accused No.3 had tendered his resignation from the Directorship of the company on 20.4.2001. That, his resignation was accepted by the Office of the Registrar of Companies on 8.5.2001 and therefore, the petitioner cannot be held liable or responsible for the default or

any other criminal act committed by the said M/s. Jayantilal Khandwala and Sons Pvt. Ltd. He further submitted that, it is alleged that an amount of of Rs.4,51,596/- was not deposited with the Competent Authority established under the Employees Provident Fund Act. He, on instructions, submitted that, after lodgment of the crime, the Officers from the office of the Recovery Officer established under the Employees Provident Fund Organization has recovered the said amount along with interest accrued thereon and the concerned Authority has issued a letter dated 24.11.2008 to that effect. He tendered across the bar, the said letter dated 24.11.2008, which is taken on record. He therefore submitted that, even otherwise after making payment along with interest accrued thereon as of today the said allegation of non deposit of dues does not survive. He therefore prayed that the said proceedings instituted by the respondents may be quashed.

4. The record indicates that, by an Order dated 9.10.2006 this Court had granted interim relief in favour of the petitioner herein. It is a matter of fact which is not denied by the respondents that, the petitioner had resigned as Director of the said company from 20.4.2001 and his resignation has been accepted by the Registrar of Companies on 8.5.2001. Thus, it is apparent

that, on the date of lodgment of the crime, the petitioner was not having any concern with the affairs of the said Company. As noted earlier, the allegation against the company is that, it committed default in depositing the amount of Employees Provident Fund of its employees with the Competent Authority from November 2001 till August, 2003 and in view of the resignation of the petitioner, he had no concern with the said company after 8.5.2001.

5. In view of the above, and on the said ground alone the prosecution lodged against the petitioner deserves to be quashed and set aside.

6. Petition is accordingly allowed and Rule is made absolute in terms of prayer clause (b).

(A.S.GADKARI, J.)