

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1398 OF 2018

Lalit Omprakash Jogani & Ors. ... Petitioners

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Amrendra Mishra for the Petitioner.
Mr. A.R. Patil, APP for the Respondent/State.

CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 9th OCTOBER, 2018

P.C.:

Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally and disposed of at the stage of admission.

2 This Writ Petition is directed against judgment and order dated 18.01.2018
passed by the learned Sessions Judge, Dindoshi, Mumbai thereby dismissing
Revision Application No. 1282 of 2016 wherein the order dated 19.10.2016
passed by Additional Chief Metropolitan Magistrate rejecting the application for
discharge is confirmed. The Petitioners/Accused are prosecuted for the offence
punishable under Sections 420, 409 read with 120 (B) of the Indian Penal Code
in C.R. No. 29 of 1998.

3 The Applicants are the Directors of the Company who have lodged a
scheme Agro Plantation Bonds in which the original complainant and others

nearly 60 persons invested money by purchasing bond of Company of various amounts. Initially, from 1993 to 1997 some dividend was paid, however subsequently Company stopped paying dividend and it went to liquidation. Therefore, the Complainant approached police and offence was registered against the Petitioners/Accused.

4 Learned Counsel for the Petitioners/Accused has submitted that the Petitioners/Accused have not committed any offence as such of cheating or criminal breach of trust for which they are charged. He has pointed out that in the statement of the witnesses, they have accepted that some amounts by way of dividends were given to the investors. However, due to change in police of SEBI under Section 12(1)(b) of the SEBI Act, the said scheme of Agro Plantation Bond cannot be implemented further. He has submitted that there was no intention of the Applicants/Accused to cheat the informant or the complainant as they have paid the dividends to them earlier. He has submitted that in order to invoke the Sections 420 or 409, it is necessary to show the ingredients of cheating which necessarily contemplate the intention to cheat and false representation right from the inception of act.

5 Learned Prosecutor Mr. Patil while opposing this application has submitted that in the statements of the investors though they have stated that some dividend was paid, subsequently the investor has mentioned that the Company has cheated all different amounts which they have invested respectively. Learned

Prosecutor has submitted that this is not the case of charge and the Sessions Court has dealt with this aspect in detailed.

6 Heard the submissions. Perused the record which is produced before the Court by the learned Counsel for the Applicant. Nearly 60 persons have invested money in the scheme and they all have grievances that their amounts were not returned to them and therefore, they claimed that they are cheated. The issue whether the Petitioners had intention to cheat and they made false representation in the beginning or they developed this intention afterwards in the process or they had hidden intention to cheat the persons during the scheme will be decided at the time of trial. Whether the amount could not be returned due to the loss suffered by the Petitioners/Accused in the business or there is deliberate avoidance to return the amount, it is matter of evidence and it will be decided at the time of trial.

7 On perusal of the orders passed by the learned Additional Chief Metropolitan Magistrate and the Judgment and Order of Additional Sessions Judge, Mumbai, it appears that both the Courts have given a detailed orders and they have adopted a same view that it is not a case for discharge. I do not find any reasons to interfere with this order.

8 Hence, Writ Petition stands dismissed.

(MRIDULA BHATKAR, J.)