

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 227 OF 2018

Vijay S/o Pandurang Lembhe,
Age: 36 years, Occupation : Business,
R/o. Harsual Sawangi,
Tq. and Dist. Aurangabad.

... **APPLICANT**

Versus

1. The State of Maharashtra
Through Police Station CIDCO,
Aurangabad.

2. Govind Balaji Bodke,
Age: Major, Occupation : Service,
R/o. Plot No.13, Savitri Nagar,
Chikalthana, Aurangabad.

... **RESPONDENTS**

Smt. Pradnya V. Saraikar, Advocate for the Applicant.
Mr. A.S. Shinde, A.P.P. for Respondent-State.
Mr. S.M. Pandit, Advocate for Respondent no.2.

CORAM : MANGESH S. PATIL, J.
DATE : 10.01.2019

JUDGMENT:

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P.
waives service for the respondent no.1. Learned advocate Mr. Pandit waives

for the respondent no.2. At the request of both the sides the matter is heard finally at the stage of admission.

2. The appellant is an accused in M.P.I.D. Case No.01 of 2017 pending on the file of the designated Court at Aurangabad for the offences punishable under Section 420, 406, 465, 467, 468 and 471 of the Indian Penal Code and for the offence punishable under Section 3 of the Maharashtra Protection of Interest of Depositors Act (hereinafter referred to as M.P.I.D. Act). He is impugning the order passed by the designated Court rejecting his application seeking discharge under Section 227 of the Cr.P.C. by the order dated 07.07.2018.

3. Briefly stated the allegations are to the effect that the informant and few other witnesses were induced to invest money in a financial establishment floated by the co-accused who are absconding and who have been added as accused nos. 1 to 4. The applicant held himself to be a Managing Director of the financial establishment and thus it is alleged that in his such capacity he induced informant and several other investors to part with money and thus had indulged in the aforementioned offences. The respondent no.2 herein is the original informant.

4. The learned advocate for the applicant submits that he is innocent and is being falsely implicated. In fact, even he himself is a victim. He had invested Rupees Six Lakhs with the co-accused, lured by the assurances given by the accused Shrikant Gatkhal. He had paid that amount to him by way of couple of cheques. He has no concern with the management of the establishment and it was being looked after by the said accused. He was neither a Director nor an employee of the establishment. He had not received a single penny. There is no material sufficient to make out all the necessary ingredients for constituting the offences. There is no material even to *prima facie* show his involvement in the crime and he deserves to be discharged.

5. The learned Judge of the designated Court has not appreciated the facts correctly and has readily rejected the application. The order is grossly illegal, perverse and arbitrary and may be set aside.

6. The learned A.P.P. and the learned advocate for the respondent no.2 submit that going by the material with the charge-sheet, it cannot be said that the charge is groundless. In the F.I.R. lodged by the respondent no.2 the applicant has been specifically named and has been attributed with a status of

Managing Director of the financial establishment that was being run by the co-accused in the name and style as Rudra Multi Trade Company. It has been specifically alleged that along with the co-accused even applicant had induced the respondent no.2 and other investors to part with money by bluffing that they would get good returns in a short time. Therefore, the revision may be dismissed.

7. I have carefully gone through the papers. It is necessary to note at the outset that the applicant had styled his application seeking discharge to be in accordance with the provisions of Section 227 of the Cr.P.C. and even the learned Additional Sessions Judge has passed the impugned order by referring to the same provision. However, it needs to be pointed out that the learned Additional Sessions Judge was exercising the jurisdiction as a designated Court established under the provisions of M.P.I.D. Act and not under the provisions of the Cr.P.C. In view of the provisions of Section 13 of that Act, a designated Court is supposed to conduct the trial in accordance with the procedure prescribed in the Code of Criminal Procedure for trial of a warrant case and for that purpose such a designated Court is to be deemed to be a Court of Magistrate. If that be so, any application seeking discharge in a

warrant case instituted on a police report can only be filed under Section 239 of the Cr.P.C. and not under Section 227 of the Cr.P.C. which is applicable to a Sessions trial or not even under Section 245 of the Cr.P.C. which is applicable to a warrant case instituted otherwise than on a police report. It is important to emphasis this aspect since there is some difference in the wordings of Section 227 of the Cr.P.C. and Section 239 thereof. In Section 227 the words used are “there is not sufficient ground for proceeding against the accused” whereas Section 239 uses the words “a Magistrate considers the charge against the accused to be groundless”. Though subtle, there is a distinction between these two provisions which needs to be borne in mind while considering the request for discharge.

8. A careful perusal of the papers reveals that in the F.I.R. itself the respondent no.2 has specifically alleged that the applicant had posed himself to be a Managing Director of the financial establishment and all the accused including the applicant had duped several persons assuring them of good returns. It is also equally important to note that in fact, the investors had lodged a complaint with the District Magistrate under Section 4, 3 of the M.P.I.D. Act on 28.01.2015. Even in that complaint the applicant was

specifically referred to as a Director of the financial establishment. Pursuant to such a complaint, the District Magistrate by the letter dated 04.04.2015 had forwarded the complaint to the Police Commissioner, Aurangabad for further action. Pursuant to such a complaint the crime was registered and the investigation had proceeded.

9. Statements of several such investors have been recorded like Bhaginath Bajirao Nagare, Siddheshwar Keru Nikambe, Gajanan Hari Khandare, Gurusiddhappa Maleshappa, Bhaskar Himmatrao Borade, Nilesh Balkishan Rapatvar, Milind Prabhu Suryawanshi, Achyut Vitthalrao Shinde and few others who have all stated in unison about the applicant having posed himself to be a Managing Director or Director.

10. Then there is a statement of one witness Bhaginath Manohar Shelke who is an employee working as a Caretaker in the apartment where the accused persons were running the financial establishment by renting an office premises. He has also stated that the applicant was working as a Manager in that establishment. Then there is a statement of one Sachin Ratnakar Chavan who has also given a statement on the same lines. It is also important that these two witnesses have also stated that for last six months

the office was closed and none of the accused had turned up.

11. At this juncture, in my considered view, based on the statements of these many witnesses one can easily comprehend the role attributable to the applicant in commission of the crime. Whether even the applicant had deposited some money in the financial establishment is a fact which cannot be looked into at this juncture, much less it has any effect of making the charge to be groundless. What is the degree of involvement of the applicant in perpetrating the crime is a matter which could be gone into only at the trial. At this juncture it cannot be said that the charge is groundless.

12. The Criminal Revision Application is dismissed. The rule is discharged.

[MANGESH S. PATIL, J.]