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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.540 OF 2019

Mr. Ketan Parekh and Ors.	... Applicants
Versus	
State of Maharashtra and Anr.	... Respondents

Mr. Nilesh Tribhuvann i/b. White and Brief Advocates and Solicitors for the Applicants.

Ms. Anubha Rastogi for the Respondent No.2.

Ms. PP. Shinde, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 28th FEBRUARY 2020.**

P.C.:

1 Heard. Rule. Rule made returnable forthwith.

2 At the threshold, the learned counsel for the applicant upon instructions submits that he would not press for the relief of seeking discharge as far as Applicant No.1 is concerned.

3 As far as the accused No.12 is concerned, the learned counsel for the applicant submits that the allegations made in the complaint against the applicant No.12 is that he was a Director of accused No.11 – Saimangal Investrade Limited, a Company incorporated under the provisions of the Companies Act. The learned counsel for the applicant has placed on record

a photocopy of the registration of the said Company i.e. of Saimangal Investrade Limited, filed with the Registrar of Companies which does not indicate that the accused No.12 is a Director of the said company. The learned counsel for the applicant No.12 submits that the learned Special Judge has not considered the said documents and therefore, there is no observation about the documents in the order and therefore, he deserves to be discharged as he was in no way concerned with any of the transactions of accused No.11 with original accused No.1. The learned counsel appearing for the respondent (SEBI) has filed an affidavit-in-reply and has submitted that the complainant i.e. SEBI, has on the basis of sufficient material come to a conclusion that the accused No.12 is also equally guilty of fraudulent transactions and therefore, there are averments against the accused No.12 in the complaint, which can be substantiated at the stage of trial. It is also submitted that the accused No.12 has placed on record photocopies of the records of the Registrar of Companies and the same would not be admissible in the eyes of law as they could not have been converted into admissible evidence.

4 The learned counsel submits that the averments against applicant No.2 – Kirtikumar N. Parekh are also vague and ambiguous. No offence is made out and hence, he deserves to be discharged. As far as applicant No.2 is concerned, it is alleged that he had transactions with

Classic Credit Limited and Panther Fincap & Management Services Ltd. i.e. accused No.6. He has indulged into fraudulent transactions with Saimangal Investrade and has violated provisions of Regulations 4(a) and 4(d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market Regulations), 1995. It is alleged that they are the Directors of accused nos.2 and accused no.6 whereas it is submitted that he is not concerned with any of the companies who are shown as an accused by the complainant, as against this, the learned counsel for the respondent has submitted that in paragraphs 47 and 48 of the complaint, the complainant has made specific averments against the accused. The transactions are specifically mentioned in the complaint. The ramifications of these fraudulent transactions are far fetched and therefore, the applicant does not deserve to be discharged.

5 As far as the applicant No.3 is concerned, he is shown as being connected with accused No.2, 6 and 11. It is alleged that he has also indulged into fraudulent transactions and has created an artificial market thereby cheating the public at large.

6 As far as applicant No.4 is concerned, it is alleged that he is a Director of original accused no.6. The learned counsel for the applicant submits that the applicant no.4 is an octogenarian and since the allegations

and averments in the complaint do not substantiate his role, he deserves to be discharged. Section 397 of the Code of Criminal Procedure :

“397. Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2)

(3)

7 The learned Special Court has considered the allegations against each of the accused persons and has rightly rejected the application seeking discharge. The learned Special Judge has considered the submissions advanced by the counsel for the accused as well as the counsel for the complainant. The learned Court has considered the entire material on record and rightly rejected the application after considering the gravity of the offences. No interference is warranted.

8 The allegations/averments in the complaint can be substantiated only after adducing evidence as the complainant has given the material particulars about the offences committed by the accused persons. After considering the averments in the complaint and the order passed by the learned Special Court, this Court is of the opinion that there is sufficient material to proceed against the accused.

9 In the complaint, specific role is attributed to each of the accused and the allegations need to be proved by adducing substantive evidence. The learned counsel for the applicants has submitted that the complaint does not disclose the violation of any provisions contemplated by Securities and Exchange Board of India.

10 This Court (Coram : Smt. Sadhana S. Jadhav, J.) in Criminal Writ Petition No.4223 of 2016 in the case of ***Radheshyam Surajmal Khandelwal and Anr. Vs. Security and Exchange Board of India and Anr.*** has held as follows :-

“15) This Court is of the opinion as in the present situation, it would not be open to this court to interpret the mandatory deeming provision in the Statute itself. These are rebuttable presumptions and the same can be rebutted at the time of recording of evidence. It would not be appropriate to exonerate the accused, only upon considering mechanically, that the complainant has not ascribed any specific role to the particular accused persons. That by virtue of being director, Statutory provision would not render any person liable to be punished if he proves that offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of the offence. In short, the onus shifts on the accused to disprove the allegations.

16) In a company, passing of resolutions and specific responsibility in the conduct of the business are inhouse proceedings and the complainant would be in no position to ascertain the same at the time of filing of the complaint. Hence, the directors would be liable to be prosecuted by virtue of deemed mandatory provisions and it would be open to them to rebut the same at the time of trial.”

11 In any case, at the stage of seeking discharge, it is not

necessary for the Court to go into a roving enquiry and all that needs to be considered is whether a prima facie case is made out, against the applicant. The act alleged against the present applicants pertain to economic offence/ white collar crimes which are well manipulated and have not only affected any individual investor but also economy of the Country as a whole and therefore, it would not be appropriate to consider the grant of relief of discharge at this stage.

12 In any case, this is an application under section 397 of the Cr.P.C, wherein the Court would exercise supervisory jurisdiction over the subordinate Court. The reasons assigned by the learned Sessions Judge for rejecting the application are justifiable and call for no interference.

13 Hence, the application as against applicant Nos.2 to 5 are rejected. Application of applicant No.1 is dismissed as withdrawn.

(SMT. SADHANA S. JADHAV, J.)