IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 267 OF 2018

Mr. Dharmesh Ramesh Batavia .. Applicant
Versus
State of Maharashtra and Anr. .. Respondents

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Mr.Mohd. Umar Kazi a/w. Mr.Ammar I. Nizami, Advocate for the Applicant.
Mr.Arfan Sait, APP for the Respondent No.1–State.
Mr.S.R. Borulkar a/w. Mr.N.N. Toshnival, Mr.Piyushh Toshnival i/b.Mr.Ashish Pawar, Advocate for Respondent No.2.
PSI N.B. Kavde, Crime Branch Unit III, Kalyan, District– Thane, present

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CORAM : PRAKASH D. NAIK J.

DATE : 14th July 2022.

P.C. :

1. This an Application challenging order dated 16.04.2017 passed by the learned Judicial Magistrate First Class, Kalyan rejecting the application of the applicant for defreezing the accounts of the Applicant from Dena Bank Boriwali (West Brnach) bearing Saving Bank Account No. 120210024874 as well as order dated 03.11.2017 passed by the Additional Sessions Judge, Kalyan.I-175 of 2011 was registered with Bazarpeth, Police Station on 03.11.2022 for the offences under Sections 420, 406 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution is that accused Ramesh Batavia, Smt. Hansa Batavia, Dharmesh Batavia and Sagar Batavia are residents of Vasai, District-Thane. They approached complainant in 2017 and informed that they are in the business of sale/purchase of clothes. The complainant was induced to sell the clothes material on credit. The accused assured that the payment towards the sale would be made from October, 2007 to June, 2008. The accused misappropriated amount was of Rs.1,91,83,556/-. The accused admitted the liability in writing. In spite of delivery of clothes, the accused did not pay the consideration and cheated the complainant for an amount of Rs. 1,91,83,556/-.

3. During the course of investigation, the bank account of the accused was freezed.

4. The learned Advocate for the Applicant submitted that the amount frozen by the the investigation agency have no connection with the offence. The amount has been frozen since 2011. There is no evidence to establish that the amount lying in the bank account has connection with the crime.

5. Learned APP, submitted that the accused were involved in

inducing complainant to part huge amount. The amount has to be deposited in the bank. At this stage, it cannot be said that the amount has no connection with the crime. Reliance has been placed on the decision of the Supreme Court in the case of **Nevada Properties Limited *V/s. State of Maharashtra & Another, (2019) 20 SCC 119*** and another decision in the case of ***Teesta Atul Setalvad V/s. State of Gujarat,(2018) 2 SCC 372.***

6. Learned Advocate for the Respondent No.2 opposed the prayers in this application. It is submitted that the amount has connection with the crime. The accused had cheated the complainant. He has relied upon the following decisions:-

I. Nevada Properties Private Limited through its Directors V/s. State of Maharashtra and another. (supra)
II. State of Maharashtra V/s. Tapas D. Neogy, (1999) AIR (SCW) 3389
III. Adarsh Co-operative Housing Society Limited v/s. Union of India & Ors. 2011 All. M.R. (Cri) 2849)
IV. Vinoshkumar Rachmchandran Valluvar v/s. State of Maharashtra & Anr, 2011 (3) AIR Bom R 203.

7. I have perused the documents. The F.I.R. was registered against the Applicant and others. The Magistrate as well as learned Sessions Judge has denied the prayers of the Applicant. The complainant was induced to part with huge amount. Trial is pending

before the concerned Court. At this stage, it is difficult to say that the amount frozen has no connection with the crime. No relief can be granted to the applicant. Hence, I pass following order :

ORDER

Criminal Application No. 267 of 2018, is rejected and stands disposed of accordingly.

(PRAKASH D.NAIK,J.)