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

CRIMINAL APPLN. U/S 482 NO. 737 OF 2019

Sahadeo Anant DarekarApplicant
V/S
The State Of Maharashtra & AnrRespondents

Mr. Prashant Badole for Applicant.
Mrs. S. D. Shinde, APP for the Respondent-State.
Mr. Rakesh Shinde, PSI, Marine Drive Police Station.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 6th JULY, 2023

P.C.:

1. The prayer is for quashing of the FIR in Crime No. 290 of 2016 punishable u/s 420 r/w. 34 of IPC. The alleged incident which led to the registration of the offence is from 07/12/2005 to 26/10/2016.
2. The genesis of the case of the prosecution as reflected in the FIR dated 26/10/2016 is as under:
3. The Complainant is staying in the UAE from past 25 years before the date of filing of FIR. According to him, he was known to the accused persons and the present Applicant was employed with the grandfather of the accused no. 1 i.e. Aditya Kishor Jain.
4. It is the case of the prosecution that the Accused persons

promised higher returns by investing the amount of the Complainant and accordingly the Complainant has paid in different installments an amount of Rs.31,22,000/- which were to be invested in the blue chip shares with the promise of higher returns.

5. The role attributed to the Applicant in the offence is that of withdrawing the amount from the bank of the Complainant and handing the same to the accused persons. The *mens rea* attributed to the Applicant is that of accepting the tip of Rs.10,000/- from the co-accused as is reflected from the statements.

6. In the aforesaid background, learned Counsel for the Applicant submits that the Applicant was working with Baboobhai Patel and Company pursuant to the appointment order dated 01/11/1989 as a clerk. In the said capacity, he has assisted the accused persons in encashing the cheque from the account of the Complainant and signature of the Applicant could be noticed on the cheque and a certificate issued by the UTI Bank, which has taken over by Axis Bank with whom the account of the Complainant was operational at the relevant time.

7. According to him, merely because the Applicant was an

employee of the co-accused that by itself will not make him criminally liable for the act of presenting the cheque and withdrawing the amount unless it is demonstrated that the present Applicant is benefited out of the commission of the offence in question by receiving the amount from Rs.31,22,000/-

8. Learned APP while opposing the prayer would urge that in the statement of the co-accused it is brought on record that the Applicant is benefited to the extent of Rs.10,000/- of cash after he has withdrawn the amount of Rs.17,22,000/- from the UTI/Axis Bank. Apart from the above, in response to the Court's query he submits that from the instructions from the Investigating Officer that there is evidence to support the case of the prosecution.

9. We have appreciated the aforesaid submissions.

10. The issue pertains to the lodging of FIR against the accused persons after they having accepted an amount of Rs.31,22,000/- viz Rs.8,00,000/-, Rs.6,00,000/-, Rs.17,22,000/- total Rs.31,22,000/- upto 2005.

11. The fact remains that neither the amount which was accepted by the co-accused has not gone to the Applicant nor to his account. The status of the Applicant as that of employee of the grandfather of the co-accused is borne out of the record by

drawing support from the appointment order issued in his favour by Baboobhai Patel and Company. The aforesaid appointment order is not disputed.

12. In this background, even if it is accepted that the Applicant has received in cash the amount of Rs.10,000/- from the co-accused that by itself will not depicts or reflects his criminal intention to be benefited out of the commission of the crime in question.

13. The amount allegedly involved in the crime is that of Rs.31,22,000/-. However, the co-accused has said that the Applicant who is the employee of the grandfather is benefited by Rs.10,000/- which was paid in cash. The position of law that the statement of the co-accused will not bind the another co-accused needs to be relied on.

14. Apart from above, necessary ingredients of the offence alleged in the case viz. the inducement by the accused persons cannot be accepted *qua* the conduct of the present Applicant as at no point of time the Applicant assured or induced the Complainant to deliver the amount as has been alleged in the FIR.

15. In this background, apart from the absence of necessary ingredients of offence alleged u/s. 420 of IPC, there is absence of

mens rea on the part of the Applicant to infer the commission of the offence of his involvement in the crime in question.

16. In this background, the Application stands allowed.

17. The observations made hereinabove will not come in the way of investigation to sight the Applicant as one of the witness during the Trial.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)