IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 955 OF 2023

1. Ashutosh Kumar,
Age: 52, Occu: Government Officer
R/o. Plot 6-6, RSC-123, Mhada Layout,
S.V. P. Nagar, Near St. Mary School,
Andheri (w), Mumbai 400053.

2. Monica Ashutosh Kumar
Age: 48, Occu: Housewife,
R/o. Plot 6-6, RSC-123, Mhada Layout,
S.V. P. Nagar, Near St. Mary School,
Andheri (w), Mumbai 400053.

...Applicant

V/s.

1. The State of Maharashtra
(At the instance of DCB CID Unit,
at Byculla)

2. Ramkumar Ramnarayan Dadhich,
R/o- Flat No. 785, Pipalda House,
Dadabadi Extension Scheme,
P.S. - Dadabadi, Tehsil-Ladpura,
Kota, Rajasthan.

...Respondents

Mr. Anil Lala i/b Mr. Ashok Bhatia for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.
Dr. Uday Warunjikar a/w Mr. Dilip shukla for Respondent No. 2.

CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.

RESERVED ON : 13th OCTOBER, 2023.
PRONOUNCED ON : 2nd NOVEMBER, 2023.

JUDGMENT : (PER SHARMILA U. DESHMUKH, J.)

1. The Applicants have invoked the jurisdiction of this Court under Section 482 of Cr.P.C. seeking the relief of quashing of CR. No. 385 of 2023 dated 20th July, 2023 registered with the Versova Police Station for the offences under Section 406, 420, 465, 467, 468, 471 and Section 506 read with Section 34 of IPC and Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. The Applicant No. 1-Ashutosh Kumar is stated to be a 1992 batch of group "A" Civil Services Central Government Cadre Officer, presently working as Regional Director of Northern Region of India in the Plastics Export Promotion Council which is directly under the administrative control of Ministry of Commerce and Industry Department of Commerce, Government of India, New Delhi. The Applicant No. 2 is the wife of Applicant No. 1.

3. The crime came to be lodged by the Respondent No. 2 alleging that the Applicants, their partner Manoj Patel and Manager Sanjay Pandey induced the Respondent No.2 and other investors to invest in land development projects by representing that, Applicant No.1 is a senior IAS officer and the Applicant No.2 is a director along with him in LFS Gobal Pvt. Ltd. That, there are 9 to 10 companies functioning

through which land development work is undertaken, films are financed and if investment will be made, attractive returns would be given on the investment. To gain their confidence, documents pertaining to Kanjurmarg-Bhandup area were shown and relying upon the misrepresentation, the First Informant invested around Rs. 1,50,00,000/- and the other investors invested an amount aggregating to Rs. 4,25,00,000/- and as such, the total amount invested is Rs. 5,77,00,000/-. The allegation is that, there was neither return on the investment nor the principle amount was repaid, and as such, the First Informant and others have been cheated.

4. Record indicates that, the crime came to be lodged pursuant to written complaint filed by Respondent No.2 with the Commissioner of Police (Crime) Andheri, Mumbai. On 8th April, 2023, the Economic Offence Wing issued notices to Manoj Patel and Sanjay Pandey calling upon them to remain present on 14th March, 2023 for inquiry in respect of the complaint lodged by the Respondent No.2. After notices were received by the aforestated two persons, the Applicants filed Anticipatory Bail Application Nos. 882 of 2023 and 883 of 2023 before the Sessions Court which were rejected vide Order dated 1st July, 2023. It appears that, the investigation has commenced in CR. No. 385 of 2023

and is underway.

5. Heard Mr. Anil Lala, learned counsel appearing for the Applicant, Mr. Ajay Patil, learned APP for the Respondent-State and Dr. Uday Warunjikar, learned counsel for Respondent No. 2.

6. Mr. Lala, learned counsel for the Applicants submit that, based on undated, unsigned complaint, the FIR has been lodged and on that basis, notices dated 8th April, 2023 have been issued by the Commissioner of Police. According to him, the allegation in the FIR is that, substantial cash amount has been handed over by the Respondent No.2 and others, in respect of which, there is no acknowledgment by the Applicants. He contends that, it is improbable that, such huge amount of cash would be parted with without any document in writing. He would further submit that the only cheque transaction is of the amount of Rs. 5,00,000/- which has also been deposited in the firm of Babulal Meghwal, who is a third party. He would further submit that, the Applicant No. 1 is a Central Government servant and the allegations are unfounded. As regards the Applicant No.2, he submits that, the Applicant No. 2 is a cancer patient and the allegations in the FIR do not attribute any role to the Applicant No.2. He would urge that continuation of the criminal proceedings would amount to an abuse of

process of law. He would point out the complaint made on 17th April, 2023 by the Applicant No. 1 to the Commissioner of Police stating that on 6th April, 2023, a complaint was made by the Applicant against the Respondent No. 2 and others for extortion and that those persons at one point of time were associated with LFS group of companies wherein the majority shareholder is the HUF of which the Applicant No. 1 is the Karta. According to Mr. Lala, the association, if any, is with the LFS group of companies and the Applicant No.1 has no connection with the said companies in his individual capacity.

7. Learned APP submits that, the investigation is going on and the statements of the witnesses have been recorded. He points out the statements of Babulal Nandlal Meghwal, Mannalal Devkaranji Gujjar and Jaising Amarsing Hada and would submit that, the allegations in the FIR have been corroborated by these witnesses. He would further submit that, the statements of the other investors have also been recorded and the investigation reveals that huge amount has been collected by the Applicants in cash. He would submit that, the Applicants have misrepresented the investors about development of the land at Kanjurmarg-Bhandup area and other investment proposals. He pointed out that, the Applicant No.1 has executed a registered Power of

Attorney appointing one M/s. Vinatia Buildcon Private Ltd. through its directors Mr. Prakash Shekhar Kotiyan and Manoj G. Patel as his Constituted Attorney to act on his behalf in respect of plot of land bearing Survey No. 275 village Kanjur, Taluka Kurla admeasuring area 63,55,225.7 sq. mtrs. He submits that, the land bearing Survey No. 275 is government land and in the Power of Attorney registered with the Sub-Registrar, the Applicant No. 1 has stated that, he owns, seizes and possesses the land bearing Survey No. 275. He has further pointed out that, the investigation has revealed about six crimes lodged in Delhi, Mumbai and Rajasthan against the Applicant No. 1 and as regards the Applicant No. 2, there are three crimes lodged in Mumbai and Rajasthan. He would further point out that, the information obtained from Registrar of Companies in respect of LFS Global Pvt. Ltd. shows that, the Applicant No. 1 is/was director of the Company. Learned APP further submits that, this is not a fit case for stifling the investigation considering the manner in which there has been misuse of the position by the Applicant No.1.

8. Dr. Warunjikar, learned counsel for Respondent No. 2 submits that as regards the sum of Rs. 5,00,000/-, the modus adopted by the Applicant No. 1 is to accept the cash amount and to divert the

same through different firms, so that the money is not traced to him. Then the money is thereafter transferred through other channels, so that there is no direct link with the Applicant.

9. We have considered the submissions and perused the record. The inherent power under Section 482 of the Cr.P.C. is to be exercised sparingly to prevent the abuse of process of law or otherwise to secure the ends of justice or to give effect to any Order under the Code. In a recent decision of the Apex Court in the case of *Supriya Jain vs. State of Haryana, SLP (Cri) No.3662 of 2023 [2023 LiveLaw (SC) 494],* the Apex Court held that, the small window that the law through judicial precedents provides is to look at the allegations in the FIR and the material collected in the course of investigation, without a rebuttal thereof by the accused and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in the abuse of process of law, it would not be proper to scuttle it.

10. In light of the settled position of law as regards the exercise of power under Section 482, the allegations in the FIR will have to be scrutinised to ascertain whether the uncontroverted allegations prima facie establish the offence or not.

11. The allegation in the FIR is that, the Applicant No. 1 was introduced to the Respondent No.2 as a highly placed IAS Officer and the Applicant No. 2 as his wife and director along with him in various companies. The allegation is that. it was projected to the Respondent No.2 that, the Company in which the Applicants are the directors are engaged in undertaking SRA/MHADA projects and other land development projects in which, if an investment made, there would a handsome return of profit.

11.1. To gain the confidence of the Respondent No. 2, the documents in respect of Kanjurmarg land were shown and it was represented to him that the Applicant No.1 being an IAS officer has good relations with highly placed Central Government officers. The allegation is that, in June, 2017, the Respondent No. 2 was informed about the scheme for investing in the land development projects and he was induced to become a member by making a payment of Rs. 5,00,000/-. That the Respondent No.2 was informed that he cannot become a direct member and he was made a sub member through Babulal Meghwal and the amount of Rs. 5,00,000/- was directed to be paid by cheque in the name of K. K. Engineering which is the firm of Babulal Meghwal. It is alleged that, in July, 2017, a sum of Rs. 40,00,000/- was paid by the

First Informant to the Applicant No.1 in the presence of Babulal Meghwal, Jaysing Hada and Mannalal Gujjar in the corporate office of Applicant No.1, located at Mumbai and at that time, Applicant No.2, Manoj Patel and Sanjay Pandey was present.

11.2. The allegation is that, in this meeting, the documents pertaining to Kanjurmarg-Bhandup land were shown and Power of Attorney as having being obtained in respect of the said land and a copy of the valuation report of the said land was also shown. In December, 2017, a sum of Rs. 30,00,000/- was paid by the Respondent No.2 to the Applicant No. 1 in the presence of Babulal Meghwal, Jaising Hada and Mannalal Gujjar. At that time along with Applicant No. 1 Manoj Patel and Sanjay Pandey were present and they assured him that he will get double the amount of the invested amount. In March, 2018, in the presence of Mannalal Gujjar and Jaising Hada, the Respondent No.2 paid a sum of Rs. 40,00,000/- in cash to Applicant No.1 and Manoj Patel and in October 2018, a sum of Rs. 35,00,000/- was paid in the presence of Mannalal Gujjar, Jaising Hada and Babulal Meghwal. At that time Applicant No.2, Manoj Patel and Sanjay Pandey had counted the cash and assured him that, soon, the return on investment will be given.

11.3. The allegation is that, upon inquiry about profit, the

Respondent No. 2 was informed that due to some technical difficulty there has been a delay. That in March, 2019 upon insisting of return of the money, the Applicant No. 1 informed the Respondent No. 2 that, the promissory note would be given by his partner Manoj Patel and on 18th March, 2019, a promissory note was made out on the letter head of firm, named Sai Ninad Enterprises signed by Manoj Patel on which Babulal Meghwal has signed as a witness. That the promissory note, was issued for the sum of Rs. 5,50,00,000/- with the promise that, the money would be returned before 31st September, 2019. It is alleged that, as the money was not returned, an inquiry was made in which it was revealed that in Kanjurmarg-Bhandup area there is no such land belonging to the Applicant No.1 and the documents and valuation report were shown are forged and fabricated.

12. Perusal of the FIR would indicate that, the amount of Rs. 1,45,00,000/- is alleged to have been handed over in cash to the Applicant No.1 in the presence of Babulal Meghwal, Jaysing Hada and Mannalal Gujjar. Learned APP has tendered the record of investigation which includes over the statements of the witnesses. Perusal of the statements of Babulal Meghwal, Jaising Hada and Mannalal Gujjar discloses that, they have corroborated the statement that, the money

was handed over in their presence to the Applicants. As far as the role of the Applicant No.2 is concerned, in the meeting of July, 2017, when the sum Rs. 40,00,000/- was handed over in cash to the Applicants and the documents pertaining to the Kanjurmarg-Bhandup Land were shown, she was present and had assured the Respondent No.2 that, the assurance is being given by the Applicant No.1 who is a highly placed Government officer and it has to be trusted. The cash amount is alleged to be handed over to the Applicants.

13. From the allegations, prima facie it appears that, the Applicant No.2 had received the cash amount alongwith Applicant No.1 and had misrepresented about the business. The Applicant No.2 had a role to play in the entire conspiracy. It needs to be noted that, Section 34 of the IPC has also been applied in the present case. The money had been handed over in her presence and the misrepresentation is that, the investment is to be made in LFS Global Pvt. Ltd. of which Applicant No.2 is a director and that the said Company was handling the development projects as well as financing film projects.

14. Considering the allegation in the FIR and the investigation which has been carried out by the Police, the statement of the First Informant as recorded in handing over the sum of Rs. 1,50,00,000/- has

been corroborated by three witnesses. As such, merely because the amounts were alleged to have been paid in cash, cannot be a reason to disbelieve the First Informant. At the time of the quashing of the proceedings, the veracity of the allegations is not required to gone into and it will be a matter of trial as to how such huge amounts of cash was generated by the First Informant. The uncontroverted allegations reflected in the material on record, prima facie reveals the complicity of the Applicants in the alleged offences and points out to the commission of the alleged offences by the Applicants.

15. Mr. Lala, learned counsel for the Applicants after deliberations sought permission to withdraw the Application. However, we are not inclined to permit the Applicants to withdraw the Application. This is for the reason that, the FIR as well as investigation which has been carried out in the said crime reveals shocking state of affairs. The Applicant No.1 is stated to be highly placed Government Officer presently working as a Regional Director of Plastics Export Promotion Council.

16. The statements of the witnesses prima facie indicate that, the Applicant No.1 by misusing and misabusing his official position, have deceived the First Informant and others and induced them to part with a

huge amount of about Rs. 5,50,00,000/- under the guise of investing in various SRA/MHADA projects and other development projects assuring them of handsome return of profit.

17. What is startling is that, such a highly placed official has been charged in six crimes which are lodged in Delhi, Mumbai and Rajasthan. Not only that, the Power of Attorney which the witnesses claimed to have been shown to them to induce them to invest into the development project is in respect of land admeasuring about 63.55,225.7 sq. mtrs. bearing Survey No. 275 situated at Village Kanjur Taluka. This huge tract of land, according to the communication of the City Survey Officer, belongs to Maharashtra State Government. This indicates that, not only private individuals are sought to be deceived, but it appears that there is a larger and wider conspiracy to deal with Government land without any authority of whatsoever nature in that behalf.

18. We are also shocked to note that, the investigation discloses that, as per the ROC details, the Applicant No. 1 is shown to be the director in various companies, the details as under :

Name of the person	**Name of the Company**	**Post held by the Applicant**	**Period of the Holding Post**
Ashutosh Kumar	LFS Aviation Pvt. Ltd.	Managing Director	2011 to 2014
		Director	2017 to 2019

Ashutosh Kumar	LFS Constructions Pvt. Ltd.	Managing Director	2011 to 2014
		Director	2017 to 2019
Ashutosh Kumar	LFS Distilleries Pvt. Ltd.	Director	2017 to 2019
Ashutosh Kumar	LFS Pharma & Healthcare Pvt. Ltd.	Director	2017 to 2019
Ashutosh Kumar	LFS Infrastructure Pvt. Ltd.	Managing Director	2011 to 2014
		Director	2017 to 2019
Ashutosh Kumar	LFS Power and Natural Resources Pvt. Ltd.	Managing Director	2011 to 2014
		Director	2017 to 2019
Ashutosh Kumar	LFS Chemicals & Fertilisers Pvt. Ltd.	Managing Director	2011 to 2014
		Director	2017 to 2019

19. We have our own doubts as regards the permissibility of an Government Officer to occupy the post of Managing Director/Director in private limited companies, considering that the Central Services (Conduct) Rules, 1964 prohibit a Government Servant from engaging directly or indirectly in any trade or business except with the previous sanction of the Government. Considering the material which is unearthed against the Applicants which reveals startling state of affairs, we find it to be of utmost importance that the investigation is not stiffled but is necessarily required to be continued.

20. It is necessary to trace the money trail so as to investigate as to whether the amounts are being laundered through various companies

incorporated by the Applicants in which either the Applicants or their associates have been shown as a directors of the company. We find that there is much more than meets the eye and the FIR cannot be quashed at this stage.

21. We are completely satisfied with the manner in which the investigating officer has conducted the investigation in the present matter.

However, considering the fact that the Applicant No.1 is stated to be an IAS officer, we feel that the present investigating officer may have his own limitations. As such, we direct the investigation to be conducted by the Deputy Commissioner of Police and the investigation to be supervised by the Joint Commissioner of Police of the said Department. The Deputy Commissioner of Police may take the help of the present investigating officer or other officers to assist the investigation.

The Application stands dismissed in the above terms.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**