

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

WRIT PETITION NO.6428 OF 2019

Mr. Somnath Ratilal Kasatkar	..Petitioner
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Hemant Kenjalkar a/w Shubham Choudhari, for the Petitioner.
Mr. K. V. Saste, APP for the Respondent/State.
Mr. V. N. Kamble, for the Respondent No.2.

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

DATE : 6th JULY, 2023

PC.

1. The case of the respondent No.2/complainant is that after having retired from the government service, he invested total amount of Rs.6,70,000/- in Jiveshwar Investment through the petitioner a co-accused. It is claimed that the aforesaid investment was in different installments which were from 2004 till 2012. According to respondent No.2/complainant, initially the returns as promised were duly delivered by the Jiveshwar Investment, but subsequently i.e. after 2012 accused ran away with money and as such committed offence.

2. The role attributed against the petitioner is that of belonging to same community as that of co-accused and

complainant and editor of community magazine “Swakul Samachar” in which advertisement was published for and on behalf of Jiveshwar Investment with lucrative offer of high returns on deposit of amounts. The fact remains that the accused Nos.1 and 2 are husband and wife, who are allegedly managing the business of said firm, whereas the present petitioner is accused No.3 and is impleaded only on the basis of publication of advertisement in community magazine in response to which the respondent No.2 has made deposits.

3. The fact remains that having come across the advertisement, respondent No.2 has made deposits way back in 2005 and got substantial returns on deposits of money and therefore he increased his deposits. As such, it cannot be said that the petitioner has any *mens rea* in commission of offence of cheating as he has merely published advertisement of such investment firm that too in community magazine. It cannot be said that the petitioner has induced the complainant to make deposits and the petitioner has cheated the complainant by promising high returns.

4. The necessary ingredients of the offence punishable under Section 420 of IPC viz. cheating by inducing the respondent No.2/complainant to make deposits cannot be inferred on the basis of act of publishing an advertisement in the magazine of which he was editor.

5. In this background and having regard to the law laid down by the Apex Court in the matter of ***State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, particularly, paragraph 108, we deem it appropriate to infer that the prosecution initiated against the petitioner is not sustainable. No offence as alleged could be inferred against the petitioner. That being so, FIR being Crime No.I-39 of 2012 punishable under Sections 420 r/w 34 of IPC and Section 3 of MPID Act is hereby quashed and set aside.

5. The petition as such stands allowed in above terms.

6. Needless to clarify that quashing is granted only to the extent of accused No.3 i.e. petitioner herein.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]