IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7461 of 2021

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DEEPKUMAR KANUBHAI THACKER

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MS SRUSHTI THULA WITH MS PRACHI J THAKKAR(10114) for the Applicant(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2
MS CM SHAH APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 02/04/2024

ORAL ORDER

1. By invoking inherent powers of this Court, the applicant – original accused, Deepakkumar Kanubhai Thacker, has preferred this quashing petition in relation to **FIR being CR No. 11215002210390 of 2021 registered with Anand Town Police Station, Anand** for the offences punishable under Sections 406, 420, 120B of the Indian Penal Code and Section 23(f) of The Securities Contract (Regulation) Act, 1956.

2. Mr. Srushti Thula, learned counsel appearing for the applicant by raising technical objection, has submitted that, the offence alleged is exclusively triable by the court of Sessions and in view of the

expressed bar, as contemplated under Section 26 of the Securities Contract (Regulation) Act, 1956, the Court will not be able to take cognizance of the offence unless and until, a complaint in writing filed by the Central or State Government or SEBI or recognized stock exchange or by any person. She would further urge that, though the chargesheet is not filed, but in case, chargesheet is filed, then, also, the Sessions Court cannot take cognizance of the offence as no complaint is filed in the present case and therefore, based on the FIR, if chargesheet is filed, then, in view of Section 26 of the Act, the proceedings cannot be proceeded further.

3. In view of the aforesaid contention, learned counsel Mr. Thula would urge that, let, the questioned FIR be quashed and the authority would be granted liberty to file a fresh proceedings in the matter.

4. On the other hand, Ms. C.M. Shah, learned Additional Public Prosecutor would urge that the petition is premature and let investigation be over and thereafter, issue before the Court can be raised by the applicant herein.

5. Having regard to the facts and circumstances of the present case, the case is covered by the decision of

this Court delivered in case of **Vipulkumar Shah Vs. State of Gujarat** (Special Criminal Application No. 1781 of 2018 dated 15.03.2018). The observations made in the said case, more particularly paras 7 to 11 are relevant to refer, which read as under:

> "7. The learned counsel appearing for the writ applicants has put forward two submissions. His first submission is that the Investigating Agency could not have filed charge-sheet for the offence punishable under the Act, 1956, and the second submission is that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence under Sections 406 and 420 of the IPC are spelt out. To put it in other words, so far as the first submission is concerned, the contention is that in view of Section 26 of the Act, 1956, the Court below could not have taken cognizance of the offence under the Act, 1956, on a police report.
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> 8. I find merit in both the submissions put forward by the learned counsel. Section 26 of the Act, 1956 reads as under:-
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> "26. Cognizance of offences by courts. (1) No court shall take cognizance of any

offence punishable under this Act or any rules or regulations or byelaws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or a recognized stock exchange or by any person.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act."

9. A plain reading of Section 26 of the Act, 1956, referred to above, would suggest that no Court will be able to take cognizance of any offence punishable under the Act except on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or a recognized Stock Exchange or a person.

10. Let me assume for the moment that the respondent no.2 herein would fall within the ambit of 'any person'. The issue which falls for my consideration is, whether the court before whom the charge-sheet is

filed can take cognizance of the offence. The word 'complaint' figuring under Section 26 of the Act means, a complaint in writing before the court as defined under Section 2(d) of the Code of Criminal Procedure. I am conscious of the fact that Section 25 makes the offence under Section 23 of the Act a cognizable offence. Since Section 23 is a cognizable offence, the police would definitely have the power to investigate. To this extent, there is no problem. The police has investigated, charge-sheet is filed. Now the stage has come for the court to take cognizance. In my view, the Sessions Court will not be able to take cognizance on the police report in view of the specific bar contained in Section 26 of the Act. The same is the position with Section 26 of the Securities and Exchange Board of India Act, 1992.

“Section 26 reads thus : “26. Cognizance of offences by courts.

(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made

thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a court of session shall try any offence punishable under this Act."

11. The law in this regard is well settled. Although the police has the power to investigate the offence alleged against the applicant and chargesheet has been filed, the Court will not be able to take cognizance in view of the specific bar. The investigation carried out by the police can be used for the purpose of filing a complaint in writing before the appropriate court. To be precise, whatever materials have been collected by the Investigating Officer could be used by the authority for the purpose of filing a complaint before the competent court."

6. In view of the statutory expressed bar as discussed hereinabove for taking cognizance of the offence, this Court is of the considered opinion that, if the investigation is permitted to continue, then, also, the Sessions Court concerned, before whom the chargesheet will file, would not in a position to take cognizance of the offence. Thus, therefore, present case is squarely fall under parameter (vi) as

enumerated in the case of **State of Haryana Vs. Bhajanlal (1992) suppl. 1 SCC 335**, for quashing the criminal proceedings.

7. Accordingly, present application is allowed. Rule is made absolute. The questioned **FIR being CR No. 11215002210390 of 2021 registered with Anand Town Police Station, Anand** and the consequential proceedings therefrom are hereby quashed qua present applicant. The authorized person or any person as contemplated under Section 26 of the Act has liberty to file a fresh complaint including the offence of the Indian Penal Code against the applicant. Direct service permitted.

(ILESH J. VORA,J)

P.S. JOSHI