2024:BHC-AUG:18362-DB



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 2580 OF 2024**

. Krushna S/o Bhujangarao Ware
Age: 43 years, Occu.: Service & Agri.,
R/o. Anand Nagar, Pathardi,
Tq.Pathardi, Dist.Ahmednagar. ....Applicant
(Original Accused)

Versus

1. The State of Maharashtra
Through its Investigating Officer,
Sonai Police Station,
Tq.Newasa, Dist.Ahmednagar.

2. Arvind S/o. Ramnath Lipane
Age: 64 years, Occu.: Agri. & Advocate,
R/o. Shete Galli, Sonai, Tq.Newasa,
Dist.Ahmednagar.
Mob.No.9637003437 .....Respondents

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Advocate for Applicant : Mr. Narayan B. Narwade
APP for Respondent no.1 : Mr.A.M.Phule

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**CORAM : SMT. VIBHA KANKANWADI & ABHAY S. WAGHWASE, JJ.**

**DATE : 12 AUGUST, 2024**

**ORDER (PER ABHAY S. WAGHWASE, J.) :**

1. Prayers in instant application are for exercise of powers under Section 482 of the Code of Criminal Procedure for quashing FIR bearing no.0329 of 2023 registered with Sonai Police Station,

Tq.Newasa Dist.Ahmednagar, and consequential proceedings bearing Special Case No.251 of 2023 pending before learned 3rd District Judge-2 and Additional Sessions Judge, Newasa for commission of offence under Sections 420, 409, 406 of the Indian Penal Code (IPC) and under Section 3 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (M.P.I.D.Act).

2. In support of relief, learned Counsel for applicant would submit that there is apparently false implication. That there was no inducement or deception by dishonest means to invest amount. According to learned Counsel, with full consciousness and awareness, applicant had invested amount to earn profit. That discretion to invest was exercised with knowledge of consequence. He pointed out that no rosy picture was painted as alleged. Learned Counsel pointed out that informant himself had approached the Chairman of the S.M. Global Company and only after interaction with him, decision to invest was taken. Learned Counsel further strenuously submitted that like present informant, even present applicant has invested money in the company. That very essentials for attracting offence of criminal breach of trust, are not available in the report. That there was no written documents or agreement assuring huge returns.

According to learned Counsel, provisions of Section 3 of the M.P.I.D. Act are also not attracted in view of nature of allegations. That there are allegations of creation of five accounts but such allegations are directed against S.M. Global Company and to that extent, no role is attributed to present applicant. That initially informant himself has admitted about receiving periodic returns and therefore, there is no element of deception or inducement with dishonest intention to invest. Learned Counsel pointed out that now investigation is over and chargesheet is filed, but investigating machinery did not succeed in gathering any evidence as regards to present applicant is concerned for receiving any amount from the alleged five accounts. That there is bank record in the form of bank statements. Therefore, taking the contents of the FIR into consideration and the evidence gathered, according to learned Counsel, none of the ingredients for commission of offence under Sections 420, 409, 406 of the IPC and under Section 3 of the M.I.P.D. Act being available, making applicant face trial would amount to injustice and hardship and so he prays for granting the relief.

3. Before undertaking exercise of issuing notice to the other side, we have gone through the FIR and documents. It is noticed that

report has been lodged by one Arvind Ramnath Lipane with Sonai Police Station, Tq.Newasa, Dist.Ahmednagar. It is reported that informant was not interested in investing amount or earning any profit, but repeatedly present applicant developed contacts and convinced him to invest amount on assurance of handsome returns. Consequently, informant claims to have invested over Rs.10,00,000/- merely believing assurance of present applicant and thereafter, returns as assured were not received and there was no financial growth of the Company in which there was inducement to invest. It is also revealed from the report that as many as 174 investors were assured to invest amount and over Rs.3,17,000,00/- was got invested in the company namely S.M.Global Company. At this stage, it would be too early to draw inference that there was no criminal breach of trust or there was no dishonesty or cheating. *Prima facie* from the FIR itself there is element of persuasion to invest to which some investors succumbed to and have apparently invested their earnings, but are not given due returns as assured. There are allegations of economic fraud.

4. *Prima facie* considering the nature of allegations, there are allegations regarding commission of offence of criminal breach of

trust and cheating. It is a fit case for trial as there is material to that extent in the chargesheet. No case for exercise of powers under Section 482 of the Code of Criminal Procedure being made out, application deserves to be rejected at the threshold itself. Hence, following order is passed :

**ORDER**

Criminal Application No.2580 of 2024 stands rejected

( **ABHAY S. WAGHWASE** )
**JUDGE**

( **SMT. VIBHA KANKANWADI** )
**JUDGE**

SPT