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

**CRIMINAL WRIT PETITION NO. 2070 OF 2019**
**WITH**
**CRIMINAL APPLICATION NO. 1145/2022**

Mr. Nandkishore s/o Gapalrao Palkar,
Age 65 years, Occ. Retired from Government
Service, r/o. 11-C, Suyog Hsg. Society,
N-8, CIDCO, Aurangabad ... **Petitioner.**

**VERSUS**

1) The State of Maharashtra,
Through CIDCO, MIDC, Police Station,
Dist. Aurnagabad.

2) Anil Kumar s/o Sunil Jaiswal,
Age 29 years, Occ. Business,
R/o. Anil Niwas, Ganesh Colony,
Sillod, Aurangabad. ... **Respondents**

...

Advocate for Applicants : Mr. S.N. Menchirel
A.P.P. for Respondent no.1/State : Mr. A.V. Lavte
Advocate for Respondent no. 2 : Mr. R.B. Dhakane

**CORAM : MANGESH S. PATIL &**
**SHAILESH P. BRAHME, JJ.**

**DATE : 15.03.2024**

**PER COURT :**

Criminal Application No. 1145/2022 seeking amendment in the prayer clause 'B' and 'C' so as to include the Special Case number is allowed. Amendment to be carried out forthwith.

2. We have heard both the sides finally at their request.

3. By way of this petition, by resorting to Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, the petitioner,

who is one of the accused in Crime No. 184/2019, registered with CIDCO MIDC, Police Station, Aurangabad, for the offences punishable under Sections 406, 420, 120B read with Section 34 of the Indian Penal Code and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, (hereinafter ‘MPID Act’), is seeking quashment of the crime, the charge-sheet and the Special Case No. 311/2021, pending in the Special Court.

4. The respondent no. 2 lodged the F.I.R. on 03.05.2019 with the allegations, which in sum and substance are to the effect that all the accused having hatched a conspiracy, induced him and 41 other witnesses to make investment in firms styled as ‘Commodity Trade Arts (CTA)’ and ‘Trupti Finance Limited’, promising them handsome returns on the investment, dishonestly and fraudulently and duped them in aggregate to a sum of more than Rs. 3.5 crore.

5. Since, the charge-sheet has also been filed, the role attributed to the petitioner is to the effect that he was one of the partners in CTA and had directly participated in soliciting and obtaining investments from the respondent no. 2 and witnesses Shivkumar Bharatrao Khogare, Bharat Uttam Patil, Jayshree Rajesh Jaiswal and Ramesh Bansilal Panchal.

6. The learned advocate for the petitioner would vehemently submit that no specific role is attributable to him in dishonestly and fraudulently inducing the investors to make the investment. Those allegations are against the main accused. He is a senior citizen and a pensioner. There is abnormal delay in lodging the F.I.R. of more than two years. He was neither a partner or a director in the establishments. He was not responsible in managing the affairs or conducting the business. The main accused Prashant Dhumal is his distant relative. Apart there from he had no role in running those establishments much less in the alleged fraud. It is abuse of process of law to make him face the trial. His case is covered by **State of Haryana and**

**Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604**.

7. Per contra, the learned A.P.P. and the learned advocate for the respondent no. 2 would oppose the petition. They would point out the specific statements from the aforementioned witnesses recorded under Section 161 of the Code of Criminal Procedure, attributing specific and precise role and the manner in which the petitioner had dealt with them by promising handsome returns and inducing them to make the investments. They would also point out that main accused Prashant Dhumal is near relative of the petitioner and would also point out from the charge-sheet as to how, from time to time, money was transferred from the account of main accused in petitioner's account and even in the accounts of his wife and daughter. They would submit that it is not a matter of false implication. There is sufficient material revealing complicity of the petitioner in perpetrating the crime.

8. Lastly, the learned A.P.P. and the learned advocate for the respondent no. 2 would submit that quashment of crime is an extraordinary relief. This Court has inherent limitations in exercising it and may not be exercised in favour of the petitioner when it is a matter under the MPID Act, involving fraud of more than Rs. 3.5 Crores, siphoned off by the accused persons from more than 40 individuals.

9. We have considered the rival submissions and perused the charge-sheet. This a request for quashment of the crime that too by hatching a conspiracy and particularly an offence under the MPID Act. The offence of this kind shake confidence of public. Apart from causing great loss financially and making them suffer mentally, who are small investors, who invest their hard earned money. In our considered view, this in itself would be a strong circumstance, which weighs against the petitioner.

10. So far as the actual participation of the petitioner in inducing the investors, there are several witnesses who are the investors themselves. The

petitioner is a maternal uncle of the main accused Prashant Dhumal. Posing himself to be the agent of CTA, he had lured them to make investments. His name specifically appears in the F.I.R. and the amounts have been credited to his account from the account of main accused Prashant Dhumal from time to time and even in the accounts of his wife Amruta and daughter Pallavi.

11. Besides the allegations in the F.I.R., expressly attributing him with the role in perpetrating the crime there are several witnesses. Witness Shivkumar Bharatrao Khogare, in his statement has stated that when he was pursuing with the main accused for getting the money back, main accused Prashant Dhumal had issued a cheque in his name for a sum of Rs. 10 lakh. Since it was dishonoured, he went to the office of Prashant Dhumal, wherein apart from other accused persons, the petitioner was present and where from he was driven out. Witness Jayshree Jaiswal has stated that when she went to the office of Prashant Dhumal, even the petitioner was present there, who told her that since the account was freezed they were unable to make monthly returns. She was given a cheque for an amount of Rs. 14,50,000/-, which was subsequently dishonoured. Similar is the version of witness Rajesh Jivan Jaiswal.

12. Pertinently, witness Ramesh Bansilal Panchal has expressly stated that when he had been to the office of Prashant Dhumal and enquired as to how was he supposed to make the investment, either by cheque or in cash, the petitioner suggested to him that if the payment was made by cheque, 10% TDS would be charged and suggested him to make the investment in cash.

13. Witness Shivkumar Bharatrao Khogare has also stated that he was in need of loan and has approached Prashant Dhumal. He was made to make payment of Rs. 5 lakh but was not extended any loan. When Prashant stopped picking up his phone calls, he went to the office where even the petitioner was present and some how made him return back. He has stated that he had made an investment to the tune of Rs. 17 lakh, which was never

returned.

14. Witness Vikrant Vijaykumar Waghule has stated *inter alia* that whenever he had been to the office of CTA and met Prashant Dhumal, even the petitioner used to be always present in that office.

15. Apart from the role attributed to the petitioner by these witnesses, the charge-sheet contains the bank statements of M/s. Commodity Trade Art (CTA) being operated by the main accused Prashant Dhumal. There are several entries, wherein moneys have been credited to the account of the petitioner, his wife as well as daughter. Considering the amounts credited in the name of all the three family members of the petitioner during the relevant period, this would be additional material revealing petitioner's complicity in the crime, which is alleged to be a product of a conspiracy.

16. In our considered view, this is not a fit case where the extraordinary powers can be exercised for quashing the crime and the criminal case.

17. The Criminal Writ Petition is dismissed.

**( SHAILESH P. BRAHME, J.)** **(MANGESH S. PATIL, J.)**

mkd/-