IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 183 OF 2024
IN
CRIMINAL WRIT PETITION NO. 3576 OF 2023

1) Mr. John Parmar
Age : 45 years, Occ: HR,
r/o. A5 Prathamesh,
Dr. D'Siliva Road,
Dadar West, Mumbai – 400 028 …. Applicant

V/s.

1) Sabita Bhalotia
r/o. B-704, Mayfair CHSL,
Evershine Nagar,
Malad West, Mumbai

2) The State of Maharashtra
(through Dadar Police Station) …. Respondent

WITH
INTERIM APPLICATION NO. 184 OF 2024
IN
CRIMINAL WRIT PETITION NO. 3635 OF 2023

1) Mr. John Parmar
Age : 45 years, Occ: HR,
r/o. A5 Prathamesh,
Dr. D'Siliva Road,
Dadar West, Mumbai – 400 028 …. Applicant

V/s.

1) Dinesh Bhalotia
r/o. B-704, Mayfair CHSL,
Evershine Nagar,
Malad West, Mumbai

2) The State of Maharashtra
(through Dadar Police Station) …. Respondent

Mr. Rizwan Merchant a/w. Mr. Ramiz Shaikh, Mr. Faisal Shaikh,
Mr. Harshid Gandhi i/b. Rizwan Merchant and Associates for the
Applicant in both the Applications.
Mr. Shivkumar Mishra i/b. Mr. Vijendra Jabra for Respondent No.1
in IA/183/2024.
Mr. Manish Bohra for Respondent No.1 in IA/184/2024.
Mr. S.V. Gavand, APP for the State.
Mr. Pradeep Pagare, PI, Parksite Police Station, present.

CORAM : A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.

RESERVED ON : 23rd APRIL, 2024
PRONOUNCED ON : 12th JULY, 2024

JUDGMENT [PER : SHYAM C. CHANDAK, J.]

1) Present Applications are being disposed off by this common Judgment as both Applications are seeking to recall a common Order dated 02nd November, 2023 passed by this Court in Writ Petition Nos.3576 and 3635 of 2023 whereby F.I.R. bearing C.R.No.344/2023 under Sections 420, 465, 467, 468, 471, 477-A read with 34 of the Indian Penal Code registered with Dadar Police Station, Mumbai against Respondent No.1 in both the Applications was quashed by consent of the Applicant. Further, it is seeking to revive the said F.I.R as the adjudication of the same on merit is still pending.

2) Heard Mr. Rizwan Merchant, learned Advocate for the Applicant in both the Applications, Mr. Shivkumar for Respondent No.1 in IA/183/2024, Mr. Manish Bohra for Respondent No.1 in IA/184/2024 and Mr. Gavand, learned APP for the State.

3) The brief facts giving rise to these Applications are as under :-

3.1) That, the said crime was registered against the Respondents on a written complaint of the Applicant, who is General Manager, Corporate Head HR, at M/s. Survival Technologies Pvt. Ltd. ('M/s. Survival'). The Respondents are husband and wife. Respondent – Dinesh Bhalotia was working in the said company. However, he committed cheating etc. against the said company. Respondent – Sabita Bhalotia was also involved in the said offence. Hence, said crime was registered against them. Respondent – Dinesh Bhalotia was arrested in the crime on 26th August, 2023. However, bail was denied to him by learned Magistrate. The Anticipatory Bail Application of Respondent – Sabita Bhalotia was rejected by the Sessions Court. Thereafter, both the Respondents approached the Applicant with a request to settle the matter. After necessary discussion, the matter was settled on certain terms and conditions. Accordingly, Consent Terms dated 27th September, 2023 along with Indemnity Bond dated 11th October, 2023 were executed between the parties. Under these documents, both the Respondents agreed to abide and be bound by the clauses therein, in perpetuity. In the background, the Respondents filed Application seeking for regular and anticipatory bail and the said writ petitions before this Court.

3.2) Accordingly, bail was granted by this Court to both the Respondents on 04th and 06th October, 2023 respectively. Thereafter, by the said common Order dated 02nd November, 2023 the said writ petitions were allowed in view of the said Consent Terms and indemnity bond and the said crime was quashed, subject to cost volunteered by the Respondents.

3.3) However, according to the Applicant, after quashing of the said crime, Respondent – Dinesh Bhalotia in connivance with Respondent Sabita Bhalotia and in furtherance of their ulterior motive of extorting the Applicant's company by causing injury to its name and reputation and in breach of the said Consent Terms and Indemnity Bond, sent e-mails dated 23rd November, 2023 and 24th November, 2023 to Mrs.Sucheta Dalal, who is the prominent journalist and Managing Editor of media outlet 'M/s. Money Life' and thereby made false and frivolous allegations against the Applicant's Company. By virtue of the said e-mails, Respondent – Dinesh Bhalotia has blatantly expressed his intention to divulge the Data of the Applicant's Company in order to derail its IPO process. Thus, the Respondents have committed the breach of said Consent Terms and the Indemnity Bond. This they did only after securing the bail and the Common Order passed in the said writ petitions, which is amounting to playing fraud upon the Court. Hence, these Applications.

4) In so far as the submissions of learned Advocate for the Applicant is concerned, he reiterated what is stated in the Application and vehemently submitted that, the Respondents have committed violation of clause no. 6 of Consent Terms and therefore the order dated 2nd November, 2023 be recalled in the interest of justice.

5) In contrast, Mr. Shivkumar Mishra and Mr. Manish Bohra, learned Advocates for the Respondents submitted that, present Applications are moved with malicious intent to pressurize the Respondents and with a purpose to hide/conceal the ill-doings of the Applicant's company. It is submitted that, Respondent – Dinesh Bhalotia was a CFO of M/s. Survivul. He had signed the Draft Red Herring Prospectus (DRHF) on behalf of the said company pursuant to which the company was permitted by the SEBI to come up with its IPO to raise funds to the tune of Rs.1000 Crores. However, later on Respondent – Dinesh Bhalotia learnt from a Manager (Audit) of the company that, there is no manufacturing activity by the company and the trading activity is only on paper for which Respondent – Dinesh Bhalotia signed the DRHF. Therefore, Respondent – Dinesh Bhalotia raised that issue with the management. Consequently, the said F.I.R. was lodged and he was booked in that crime alongwith wife – Sabita Bhalotia to pressurise him.

5.1) Learned Advocates for the Respondents submitted that, the e-mail dated 23rd November, 2023 addressed to Sucheta Dalal was sent sans the name of Applicant's Company and intended to safeguard the investors' interest. However, Sucheta Dalal forwarded that e-mail to SEBI. If indeed Respondent – Dinesh Bhalotia wanted to create extra-ordinary difficulties for the company, he would have anonymously given a written complaint to SEBI to that effect alongwith evidence. The learned Advocates submitted that, looking at the national interest, there was nothing wrong on the part of Respondent – Dinesh Bhalotia in sending said e-mails. Respondent – Sabita Bhalotia was not directly or indirectly involved in the act of sending said e-mails. As such there was no breach of the Consent Terms and the Indemnity Bond by the Respondents. Considering the text of the e-mails it is apparent that, there was no breach of the Consent Terms and the Indemnity Bond. In the backdrop, both the Applications are liable to be dismissed.

6) The Consent Terms contain various clauses based on which the said writ petitions were filed and the crime was quashed. Paragraph 6 (a), (f) and (g) thereof is relevant for deciding these Applications. The said portion reads as under :-

> *(a) The Defendants and/or their agents and/or servants and/or any person claiming through and/or under the Defendants shall restrain from calling upon, representing the Company and dealing with statutory bodies, investors, auditors or in any way verbal, written or electronic media cause harm to the Plaintiff and/or reputation of Plaintiff and/or people associated with the Plaintiff and issuing any threats or disseminating and/or communicating any false, frivolous, defamatory and/or derogatory statements, accusations and allegations against the Plaintiff and/or people associated with the plaintiff in form of letters, representations, emails and any other medium of communication.*
>
> *(f) The Defendants undertake to permanently refrain from using or misusing any confidential information, facts, or data of the Plaintiff and from engaging with the Company's stakeholders, including but not limited to customers, investors, auditors, vendors, directors, associates, employees, shareholders, related parties and any other person associated with the Company, in any manner that would harm the interests of Plaintiff or any of its stakeholders.*
>
> *(g) The Defendants commit to permanently cease issuing threats or disseminating false, frivolous, defamatory, or derogatory statements, accusations, or allegations against the Plaintiff or*

individuals associated with the Plaintiff, or Company's stakeholders whether in the form of letters, representations, emails, or any other communication medium.

7) 1st e-mail dated 23rd November, 2023 reads as under :-

" Dear Suchetaji,
I am CA Dinesh and EX CFO of a company who has recently got first phase SEBI approval for IPO of 1000 crores through me only & my name appearing as top most professional authority of company in DRHP. As soon as I got concrete evidences from fraudulent activity of company & started opposing them, they suspended and thereafter terminated me in fear of being exposed. I want to bring entire facts with evidences with proper authorities through you for illegal activities, money laundering & siphoning. Recently, govt. insurance co. also declared them as a fraudulent co. They are also exploring 100% stake sell by duping investors.
Can we meet and discuss pl help and confirm.

BR/Dinesh
9930817645 "

7.1) Reply e-mail dated 24th November, 2023 reads thus :-
" Dear Sir
This is NOT AN ISSUE YOU TAKE TO THE MEDIA. Please write to SEBI immediately. If indeed you played a role in getting the IPO cleared – you are sure to know everybody who matters at the regulator.
Even otherwise Ms Puri Buch looks at email. Write to her at chairperson@sebi.gov.in
In fact I am copying her – because it will test whether you are genuine about giving information at all. It is curious that you do not bother to name the company.

best
Sucheta Dalal
Managing Editor "

7.2) 2nd e-mail dated 24th November, 2023 reads as under :-

> *" Dear Sucheta,*
> *Company got till now first phase of approval, secondly when I came to know through plant heads and internal audit team I tried to visit plant but got suspended, they threatened to attack on my family also, further many issues developed which cannot be written here at this moment, I just want to highlight in NATIONAL/INVESTOR interest, in our meeting if you find that truth is missing then you can take your own decision. I have been restricted by them to disclose any thing, we can set strategy to bring forward truth & facts.*
>
> *BR/Dinesh "*

8) The Respondents have not disputed that, the subject e-mails were sent to Suchita Dalal by Respondent – Dinesh Bhalotia. This fact is confirmed by Dinesh Bhalotia's designation and the IPO related details therein. That apart, during the course of hearing of these Applications, when the parties discussed amongst themselves to settle these Applications amicably, the learned Advocate for the Respondents did not dispute the fact of sending said e-mails by Respondent – Dinesh Bhalotia. The details in the e-mails are enough to understand that, it relates to the Applicant's company only and thus sufficient to reach the company once said e-mail came to the notice of SEBI and some economic crime investigating agency.

9) Bare reading of the e-mails evinces that, said e-mails were purposely sent to the journalist Sucheta Dalal to unearth the alleged illegal activities, money laundering, siphoning by the Company of Applicant so that, finally it become widely public and legal action is taken against the

Applicant and his company by police and/or Competent Government Authority/ies concerned. For this purpose only Respondent – Dinesh Bhalotia gave his mobile number in the 1st e-mail so that, talk and meeting is possible between him and Sucheta Dalal. Thus, the ultimate objective to be achieved with the help of said e-mails was to somehow cause substantive injury to the Applicant' company, as defined in Section 44 of the I.P.C. Otherwise there was no reason for sending the said e-mails to Sucheta Dalal as she had no concern either with the Applicant's company or with the Respondents.

10) The Respondents claim that, the e-mails were sent in NATIONAL and INVESTORS' interest, however, for this purpose the Respondents were not required to wait till they get bail and the F.I.R. was quashed. This conduct clearly indicates that, as soon as the employment of Respondent – Dinesh Bhalotia got disconnected from the Applicant's company and it stopped him from receiving monetary benefits, he indulged in the act of damaging the reputation of Company. If the Respondent was really conscious of the National interest, then he would not have entered into a compromise with the Applicant and would have contested the case.

11) From the Consent Terms and the Indemnity Bond it was evident that, under said arrangement between the parties, the Respondents had guaranteed an immunity to the Applicant and his Company from any legal action and litigation that may be directly or indirectly initiated at the

instance of the Respondents. Respondent – Dinesh Bhalotia however, sent those e-mails to do the contrary. The e-mails were sent to Sucheta Dalal just about one week after 30th November, 2013 when this Court recorded the compliance of the conditions on which the F.I.R. was quashed by Order dated 02nd November, 2013 and made that Order absolute. However, at that time the fact of sending the e-mails was suppressed from this Court by the Respondents.

12) In view of the above facts and circumstances, we are of the considered view that, quashing of the F.I.R. sought in this case by the Respondents was the outcome of playing fraud upon this Court as the Consent Terms and Indemnity Bond were not genuinely intended by the Respondents but with an ulterior motive to get the relief of bail and quashing of the F.I.R to indulge in activities detrimental to the Applicant's company. Therefore, the said Common Order is required to be recalled by allowing both the Applications, accordingly.

12.1) Hence, following order :-

12.2) Interim Application Nos.183 and 184 of 2024 are allowed.

12.3) The Order dated 02/11/2023 in Criminal Writ Petition No.3576 of 2023 with Criminal Writ Petition No.3635 of 2023 thereby quashing of said C.R.No.344/2023 registered against the Respondents with Dadar (W) Police Station, Mumbai, is recalled.

12.4) The said F.I.R. bearing C.R.No.344/2023 stands revived and the investigating agency is directed to investigate the said crime expeditiously.

12.5) Considering the facts and circumstances of the case, the Respondents are not entitled for refund of the cost totaling to Rs.1,50,000/- which they have deposited with Advocates Association of Western India, Generation Next fund, Mumbai as per the said Order dated 02/11/2023. The said cost is forfeited in the account of the Advocates Association of Western India, Generation Next fund.

(SHYAM C. CHANDAK, J.) **(A.S. GADKARI, J.)**