

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 420 OF 2024

Sandeep Jhaveri]
Age :- 65 Years, Occupation :- Business]]
R/at : 302, Sea View Annex]
Ishwar Lal Garden, Vile Parle (West)]
Mumbai : 400 056, Maharashtra] Applicant

V/s.

1) The State of Maharashtra]
(Through Santacruz Police Station,]
Mumbai)]

2) Sameer Kishore Ganatra]
Age :- 53 Years,]
Occupation :- Insurance Agent]
R/o :- 102, 1st Floor, Sea View Annexe]]
Opp. Ishwarlal Park, Vile Parle (West)]
Mumbai : 400 056, Maharashtra] Respondents

Mr. Hrishikesh Mundargi a/w. Ms. Shrishti Singh i/b. Mr. Madan Gupta for Applicant.

Ms. Rutuja Ambekar, A.P.P. for Respondent No.1-State.

Mr. Rushabh Vidyarthi a/w. Mr. Chittesh Dalmia for Respondent No.2.

CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.

RESERVED ON : 27th JUNE, 2025

PRONOUNCED ON : 1st JULY, 2025

JUDGMENT (PER RAJESH S. PATIL, J.) :-

1) This Criminal Application is filed under Section 482 of the Code of Criminal Procedure, by the Applicant seeking quashing of FIR bearing CR No. 539 of 2023 dated 5th July, 2023, registered at Worli Police Station, for the offence punishable under Section 420 of the Indian Penal Code, 1860.

2) It is alleged in the FIR that, the Applicant, accused and the Complainant, both were residing in the same building and were known to each other. On 21st March, 2021, the Applicant had sent two WhatsApp messages to the Complainant thereby informing about opportunity to earn huge money. The Complainant did not respond to the messages, therefore the Applicant personally visited the house of the Complainant and explained his idea of investing in cryptocurrency. As the Complainant had no knowledge about the said sector, hence was reluctant to invest. The Applicant went on persuading the Complainant and his family members to invest in cryptocurrency in order to earn huge returns on investment. Believing the promises of Applicant, hesitantly the Complainant and his family members invested an amount of Rs. 5,00,000/- with the Applicant.

3) On 13th April, 2021, the Applicant informed the Complainant that there is increase in the amount invested by the Complainant and the

investment has reached to the tune of Rs.15 crores and if Complainant wants to withdraw of the said amount, the Complainant should purchase bitcoins worth Rs.25 lacs. As the Complainant was not having such huge amount, the Complainant invested around Rs.28 lacs with the Applicant from 21st March, 2021 to June 2021. Thereafter, the Complainant met the Applicant and asked him about his transaction in cryptocurrency. However, the Applicant thereafter started giving evasive answers. Hence, the Complainant in the month of January 2022, requested the Applicant to return back the principal amount of Rs.28 lacs which was paid to the Applicant. The Applicant refused to pay the said amount, so also threatened the Complainant. Hence, an FIR was lodged for the offences punishable under Section 420 of the Indian Penal Code with Santacruz Police Station, bearing Crime No. 539 of 2023.

4) The Applicant thereafter applied for anticipatory bail before Sessions Court which was rejected by an Order dated 9th February, 2024. The Applicant was subsequently arrested and remanded to custody. Thereafter, the Applicant applied for regular bail before the Metropolitan Magistrate Court at Bandra. Even the said Application of the Applicant was rejected. Therefore, the Applicant applied for bail before the Sessions Court, Mumbai. The said regular bail application of the Applicant was allowed by Order dated 1st March, 2024. Thereafter the present Criminal Application under Section 482 of the Code of Criminal Procedure has been

filed by the Applicant.

5) It is the case of the Applicant that there were Consent Terms executed between the Applicant and the Complainant, pursuant to which, the amount as mentioned in the consent terms has been paid by the Applicant to the Complainant, being an amount of Rs.18 lacs. The Complainant had agreed to give no objection for quashing the FIR and had mentioned the same in the Consent Terms. After accepting the amount as mentioned in the Consent Terms of Rs.18 lacs, the Respondent No.2 is now trying to take advantage of the situation and going back from his promise. It is further submitted on behalf of the Applicant that, the cryptocurrency is investment business and the Complainant was aware about the risk involved. It was an investment plan, which was well explained to the Complainant. The amount of the Complainant was invested in the market and as there was downfall and there were losses to the Complainant. The amount which was invested by the Complainant, got stolen from the wallet of Binance account.

6) Learned Advocate Mr.Vidarthi and the learned A.P.P. opposed the Application on the grounds that, the investment was of Rs.28 lacs and even if the interest part is not paid, atleast the principal amount should have been paid by the Applicant to the Complainant. Only for the purpose of the bail application, the Complainant had agreed to give consent to the bail to be granted to the Applicant as the family of the Applicant and the

Complainant were staying in the same building and were known to each other for years. As the Applicant was in jail, only on humanitarian ground, the Complainant gave his no objection. The Complainant is ready to forgo the interest portion and if the balance amount of Rs.10 lacs is paid to the Complainant, he is ready to give his no objection to the quashing of the FIR and to the charge-sheet filed before the learned Magistrate. It is further submitted that once charge-sheet is filed, this Court should not entertain the present Application. The statement recorded of the witnesses and the fact that has come on record clearly reveals that, the offence is made out against the Applicant. The Applicant, accused needs to face trial and the FIR and charge-sheet cannot be quashed, at this stage.

7) We have heard learned Advocate for the parties. There is no dispute that cryptocurrency is not regulated by the law in this country. Therefore, no person can induce any other person to invest in cryptocurrency. The Applicant met the Complainant and kept on inducing the Complainant and his family members to invest in cryptocurrency. The Complainant was not ready to invest in cryptocurrency as he was not aware about the said business.

8) For quashing criminal proceedings under Section 482 of Criminal Procedure Code, it has to be seen whether the allegations in the complaint and F.I.R. *prima facie* indicate that there are serious allegations against the accused persons of having committed an offence.

9) The family of Applicant and Respondent No.2 were known to each other for years. As Applicant was in jail, his wife emotionally appealed to the Complainant to help in order to make efforts for releasing the Applicant from jail. The Complainant on humanitarian ground, signed the Consent Terms and the said Consent Terms were signed by the wife of Applicant, mentioning that she is signing the Consent Terms on behalf of the Applicant. Thus, in real sense, the Consent Terms were not signed by the Applicant, hence he cannot seek quashing of the FIR on the basis of the statements inserted in the Consent Terms. According to us, there is no agreement between the Complainant and the Applicant for quashing the present proceedings. In the present proceedings, the charge-sheet has already been filed after recording the statement of the witnesses.

10) The Supreme Court in the decisions namely (i) *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.*, AIR 1992 SC 604, (ii) *Rajeev Kourav vs. Baisahab & others*, (2020) 3 SCC 317 and (iii) *Kaptan Singh vs. State of Uttar Pradesh and others*, (2021) 9 SCC 35, has held that exercise of powers under section 482 of the Code of Criminal Procedure to quash the proceedings is an exception and not a rule. Appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure.

11) In the recently reported judgment of *CBI vs. Aryan Singh*, AIR 2023 SC 1987, the Supreme Court has held that while examining the power

under Section 482, the High Court should not conduct a mini trial. Similarly in the judgment of *State of Odisha vs. Pratima Mohanty and others*, (2022) 16 SCC 703, the Supreme Court has held that once the charge-sheet is filed, the High Court should be reluctant to quash the complaint. Paragraph no.8.2 of the judgment reads as under :

8.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this court the powers under section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts all onerous and more diligent duty on the Court.

[Emphasis supplied]

12) In the present proceedings, the charge-sheet has been already filed on 18th July, 2024. The police have recorded statements of four witnesses, copies of which are enclosed to the charge-sheet and forms part of the record of the present proceedings.

13) After considering the contents of FIR and the various documents on record, annexed to the charge-sheet, we are satisfied that it constitutes the ingredients of the offences alleged. Taking into account the law as laid down by the Supreme Court in the judgments referred above, we find that there is no merit in the present Application and the same deserves to be dismissed.

14) The Criminal Application is accordingly dismissed.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)