



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.216 OF 2024

Rajendra s/o Suryabhan
Upadhye, age 42, occupation:
business, r/o flat No.1 304 SR
No.256/2 Parksytte Homes,
Panchvati, Opposite Rajbhihari
School, near Bali Mandir,
Nashik, Maharashtra. **Applicant.**

:: VERSUS ::

1. The State of Maharashtra,
through Police Station Officer,
Police Station – Civil Lines Police
Station, Akola.

2. Dr.Kishor Shridharrao Dhone, A/a
- 45 years, occupation – Doctor,
resident of flat No. , Ravi Nagar,
Goenka Layout, Civil Lines, Akola,
Maharashtra. **Non-applicants.**

**Shri Ashish Deep Verma, Counsel and Shri A.P.Vyas, Advocate
for the Applicant.**

**Shri S.S.Doifode, Additional Public Prosecutor for the
Respondents/State.**

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

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CLOSED ON : 19/09/2025

PRONOUNCED ON : 24/09/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. The present application is preferred by the applicant for quashing of the FIR in connection with Crime No.470/2023 registered under Sections 406 and 420 read with 34 of the IPC.

2. The applicant is arraigned as an accused on the basis of report lodged by Dr.Kishor Shridharrao Dhone on allegations that he was induced to invest the amount on promise that he would receive handsome returns from the said investment. Accordingly, he has invested the amount in a scheme floated by the company namely "Platin Ultima Scheme". The applicant is head of the company for Maharashtra which has floated the scheme and assurance was given that investors would get the handsome returns

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on depositing or investing amounts. However, despite investing amounts, the complainant has not received any amount and therefore, he approached the police station and lodged the report. On the basis of the said report, the police registered the offence against the applicant.

3. Heard learned counsel Shri Ashish Deep Verma for the applicant and learned Additional Public Prosecutor Shri S.S.Doifode for the State.

4. Learned counsel for the applicant submitted that as far as the applicant is concerned, absolutely, there is no allegations against him except he attended meeting. Therefore, no *prima facie* case is made out against the applicant. He submitted that as far as other criminal antecedents are concerned, which are offences registered subsequent to the present crime. Even, accepting that, mere registration of the offence is not sufficient to reject

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the application of the applicant considering no *prima facie* case is made out against him, the FIR registered against the applicant deserves to be quashed.

5. *Per contra*, learned Additional Public Prosecutor for the State has opposed the application on the ground that as the applicant is absconding since registration of the crime and look out notice is also issued against him on 13.2.2024, powers cannot be used in his favour. He further submitted that look out circular is already issued against the applicant who is residing in Dubai. It is further submitted by him that the said scheme is nothing but fraud played upon the investors by using Multi Level Marketing Scheme and by misusing the Format of Crypto Currency. The accused in this crime was having knowledge that such returns of the invested amounts cannot be returned to the investors and lured the investors and gave them promise of crypto currency which are

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absolutely worthless thereby causing huge financial loss to the investors. He submitted that considering four other offences are registered against the applicant and he is absconding since the registration of the offence and staying in Dubai, inherent powers cannot be used against the applicant.

6. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and ors vs. State of Gujarat and anr**, reported in **AIR 2017 SC 4843**.

7. On hearing both the sides and perusing entire record, there is no dispute as to the fact that the applicant was working for company namely "Platin Ultima Scheme" and he was head of the company for Maharashtra. Recital of the FIR shows that the applicant and other office

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bearers of the said company lured the various investors including the complainant by giving promise of handsome returns and called investment from them. It further reveals that the scheme was floated on the promise that they would get crypto currency. They have also given the coins of crypto currency. As far as merits of the matter is concerned, admittedly, there is an allegation against the applicant to the extent of inducement to the various investors.

8. Question before this court is, whether the inherent powers under Section 482 of the CrPC can be used against the applicant in the background that he is absconding since registration of the crime and look out notice is also issued against him.

9. The decision in the case of **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and ors** relied upon

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by learned Additional Public Prosecutor for the State lays down broad principles which emerge from the precedents on the aforementioned subject and lays down following guidelines:

“(1) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

(2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash

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under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

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(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

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(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or

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misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance".

10. In the case of **Narinder Singh and ors vs. State of Punjab, reported in (2014)3 SCC 54**, the Hon'ble Apex Court observed that in respect of offence against the society it is the duty to punish the offender. Hence, even where there is a settlement between the offender and victim the same shall not prevail since it is in interests of the society that offender should be punished which acts as deterrent for others from committing similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrent punishment. In such cases, the court may be of the opinion that a settlement between the parties would

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lead to better relations between them and would resolve a festering private dispute.

11. As far as the facts of the present case are concerned, the crime is registered against the applicant on 21.12.2023. As the applicant is absconding, various notices were issued and proceedings were initiated against the applicant. However he has not appeared before the investigating officer and, therefore, by order dated 13.2.2024 Superintendent of Police, Akola issued look out notice against the applicant.

12. As the law in this regard is settled in catena of decisions of the Hon'ble Apex Court, including the decisions in the cases of **State of Haryana vs. Bhajan Lal**, reported in MANU/SC/0115/1992, **State of Karnataka vs. M.Devendrappa anr**, reported in MANU/SC/0027/2002, and **State of Andhra Pradesh vs. Golconda Linga Swamy**

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and anr, reported in **MANU/SC/059/2024** and reiterated that it is not necessary to make any elaborate discussion on the issue of the abscondence of the accused. But, it is necessary to state that it is also decided in number of decisions that the absconding accused who have scant regard for the legal process, should not be shown any indulgence while exercising the extra ordinary power under Section 482 of the CrPC.

13. (In the absence of the accusations, the prosecution does not have opportunity to adduce the evidence against the absconding accused. It may be possible that the witnesses may not have come to the witness box if the accused is arrested subsequently and may not have deposed against the accused persons in the trial for variety of reasons. While considering the prayer of an accused for quashing of proceeding in exercise of power under Section 482 of the CrPC, where chances of

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conviction of the accused is bleak, delay in approaching the court may not be ground for rejecting the application if the high is satisfied that allowing the proceedings to continue will be an exercise in futility and result in wastage of time and resources of the Court.). It is open to the High Court to take into account, the bona fides and conduct of the accused who invokes exercise of the extraordinary power under Section 482 of the Cr.PC. Whether such accused absconded or jumped bail, the reasons for doing so and whether he has waited "for manipulation of hostility of witnesses"? Conduct of an accused can be a justifiable reason for the court to refuse to exercise its power under Section 482 of the Code of Criminal Procedure.

14. Since the accused is a proclaimed offender, look out notice is issued against him, and is not appearing despite the look out notice is issued, itself is an offence

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under Section 174(a) of the IPC punishable with imprisonment 3 years and fine.

15. The applicant, though declared a proclaimed offender long back, has not approached the trial court and has not sought bail from the trial court. While exercising powers under Section 482 of the CrPC, it has to be borne in mind that it should not ordinarily embark upon an enquiry with evidence in question is reliable or not or whether a reasonable appreciation of accusations would not be sustained as this is to be done by the trial court.

16. Needless to say that when the accused is absconding and not obeying the orders of the court and did not help the prosecution in investigation, the application under Section 482 of the CrPC requires to be considered in the light of the above facts.

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17. As observed earlier, the scope of exercising of powers under Section 482 of the CrPC has been extensively considered in various decisions and has emphasized and issued note of caution that the powers should be exercised sparingly and that too in rarest of rare cases.

18. It would not be proper for the High Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under Section 482 Cr.P.C.

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19. Considering the facts of the present case, the applicant is absconding, has not made himself available for investigation purpose, the look out notice is issued against him, reply filed by the State shows that he is staying outside India in Dubai, and he is a proclaimed offender, we consider that the application of the applicant deserves to be rejected.

20. In this view of the matter, the application is **rejected.**

Application stands disposed **of.**

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

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