IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 131 OF 2018

Nanabhau Karbhari Kolhe ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

Mr. N.S. Jaju, Advocate for applicant.
Mr. S.D. Ghayal, A.P.P. for respondent - State.

CORAM : SANGITRAO S. PATIL, J.
DATE : 17th JULY, 2018

PER COURT :-

The applicant has challenged the order dated 20th March, 2018 passed below application Exhibit 16 in Sessions Case no. 246 of 2017 by the learned Additional Sessions Judge, Ahmednagar whereby the claim of the applicant (accused no.5) for discharge of the offences punishable under Sections 420, 406, 468 read with Section 34 of the Indian Penal Code and also under Section 3 of Maharashtra Protection of Interest of Depositors Act, 1999 came to be rejected.

2. The learned Counsel for the applicant submits that as seen from the contents of the F.I.R. lodged by the

informant – Shrikant Vitthal Kale on 27th April, 2017, accused nos. 1 to 4 established two companies viz. D.S. Bhusari Multi-services and Trading Company and Swapnapurti Infrastructure and allured the depositors to deposit money with the assurance that the said money would be refunded within two years with 50% of increase. Accordingly, the depositors invested their money having total of Rs.48,61,000/-. However, they did not refund the money to the depositors within the given time. Therefore, an F.I.R. was lodged against accused nos. 1 to 4, on the basis of which the above numbered crime came to be registered.

3. The learned Counsel for the applicant further submits that the present applicant was not named in the F.I.R. Even otherwise, as per the case of the prosecution, the present applicant had obtained loan of Rs.18,00,000/- from accused no.1 and did not return that amount, and therefore, he is connected with the above mentioned crime. He pointed out to the notarized receipt executed by accused no.1 in favour of the applicant on 26th December, 2017 acknowledging the receipt of Rs.18,00,000/-

from the present applicant. He submits that some of the depositors are witnesses to these documents. He submits that there is absolutely no reason to prosecute the applicant for the above mentioned offences. However, the learned Trial Judge has recorded a perverse finding in para 6 of the impugned order that the present applicant and accused no.1 established a trading company and transferred the amount collected from the public at large. He submits that the applicant has nothing to do with the company that was established by accused nos. 1 to 4. He submits that prosecuting the applicant for the above mentioned offences is nothing but an abuse of process of law. He, therefore, prays that the applicant may be discharged of the above mentioned offences and the impugned order may be quashed and set aside.

4. The learned A.P.P. opposed the application. He submits that it has come in the statement of accused no.1 that he had paid Rs.18,00,000/- to the applicant. As such, prima facie, the it is disclosed that accused no.1 syphoned the amount collected from the members of the scheme to the applicant, and therefore, the applicant has

been rightly connected with the above mentioned offnces. He submits that the learned Trial Judge has rightly rejected the application filed by the applicant. He, therefore, prays that the revision application may be dismissed.

5. As seen from the contents of the F.I.R. and papers of investigation, the applicant has no concern whatsoever with the companies that were established by accused nos. 1 to 4. It seems that he had taken loan of Rs.18,00,000/- from accused no.1. However, he has repaid that amount to accused no.1 on 26th December, 2016. A notarized receipt to that effect has been produced by the applicant. As such, the amount of Rs.18,00,000/-, that was received by the applicant from the accused, was returned even prior to filing of the F.I.R. It seems that some of the depositors have signed the said notarized receipt as witnesses. If that be so, the applicant cannot be connected with the above numbered crime. The applicant had no concern with the depositors. He had not received any amount from the depositors and the informant. The learned Trial Judge has wrongly observed that the

applicant and accused no.1 established trading companies. There is absolutely no evidence to show that the applicant has any concern with the companies established by accused nos. 1 to 4. Prosecuting the applicant for the above mentioned offences, in the circumstances, would be nothing but abuse of process of law. In the circumstances, the applicant has to be discharged of the above mentioned offences. Hence the order :-

ORDER

(I) Criminal Revision Application is allowed.

(II) The impugned order dated 20th March, 2018 is quashed and set aside.

(III) The applicant is discharged of the offences punishable under Sections 420, 406, 468 read with Section 34 of the Indian Penal Code and under Section 3 of Maharashtra Protection of Interest of Depositors Act, 1999.

(IV) Bail bonds furnished by the applicant shall stand cancelled.

(V) Criminal Revision Application is accordingly disposed of.

[**SANGITRAO S. PATIL**]
JUDGE

SSD