

HIGH COURT OF M.P. BENCH AT INDORE
BEFORE SINGLE BENCH: JUSTICE SHRI SHAILENDRA
SHUKLA

Case No.	:	M.Cr.C.No.23883/2020
Parties name	:	Alka Shrivastava v/s. State of M.P.
Date of Judgment	:	22/09/20
Bench constituted of	:	Single Bench :- Hon'ble Justice Shri Shailendra Shukla
Judgement / Order passed by	:	Hon'ble Justice Shri Shailendra Shukla
Whether approved for reporting	:	Yes.
Name of counsels for the parties.	:	Shri Manish Gupta, Advocate for the petitioner. Shri Bhaskar Agrawal, Public Prosecutor for State.
Law laid down	:	FIR against an Investment Advisory Firm registered with SEBI. (a) Complainant not a victim himself – Offence under Section 406 and 420 of IPC not made out. (b) Firm not accepting deposits but only levying a fees for its advise. - Provisions of 'M.P. Nikshepakon Ke Hiton Ka Sanrakshan, 2000' are not attracted. (c) Complaint against a firm registered by SEBI can only be filed by SEBI Board – Police not authorized to register FIR against such firm – FIR is liable to be quashed.
Significant paragraph numbers	:	9 to 33.

HIGH COURT OF M.P. BENCH AT INDORE
S.B : HON'BLE JUSTICE SHRI SHAILENDRA SHUKLA

M.Cr.C. No.23883/2020

ALKA SHRIVASTAVA

v/s.

STATE OF M.P.

Shri Manish Gupta, Advocate for the petitioner.
Shri Bhaskar Agrawal, Public Prosecutor for State.

(ORDER)

22.9.2020

1. This order seeks to dispose of the petition filed under Section 482 of Cr.P.C for quashment of FIR and subsequent proceedings.
2. The facts as narrated in the petition succinctly are that on 4.3.2020, a team of police officers from Crime Branch, Indore raided the office of Money Secure Investor Investment Adviser on complaint filed by a broker also involved in investment consultancy. They seized documents, equipment etc placed in the Office. Subsequently, an FIR was registered against the petitioner who is the proprietor of the company along with two other persons under Sections 406, 418, 419, 420, 109 and 120B of IPC and Section 6(1) of M.P. Nikshepakon Ke Hiton Ka Sanrakshan, 2000 (hereinafter referred as 'the PID Act').
3. As per the petitioner, the Company is registered in SEBI and has complied with all the SEBI regulations and is also registered with Local Municipal Corporation and Labour Department. The petitioner submits that the FIR mentions the name of one Anoopam Gupta (respondent No.2) who had filed a complaint against the Company. Anoopam Gupta, is a broker and not a client nor investor

or employee and no way connected to the company and his complaint is without any basis and based on hearsay. The Investigating Officer has taken cognizance of such complaint without verifying the same. There is a specific procedure laid down under Section 11 of SEBI Act, 1992, for carrying out investigation in respect of companies, which are registered in SEBI because these companies managed investment of large number of clients at any given point of time and any disturbance in regulations of such companies can result in huge loss of the clients. Hence, specific procedure for carrying out investigation has been laid down. The companies following all the SEBI guidelines makes sufficient disclaimers and disclosures well in advance. The company merely provides advice to its client and execution of such advice is completely at the discretion of the client. It is further stated that there is no complainant in the case who had accused this company of cheating him and therefore, provisions under Section 420 of IPC are not applicable. Since the company does not take deposit from its customers and only offers advice, no ingredients of Section 406 of IPC are present to implicate the company under this provision. For the same reason that the company does not take deposits from customers, provisions of PID Act are not applicable. Further, there is a violation of provision of Section 6 of the PID Act, which requires express permission of the officer not below the rank of Superintendent of Police having jurisdiction before initiating the investigation in the matter. The petitioner in his petition, further submits that no reason has been assigned by the

complainant as to why he did not approach the Vijay Nagar police station, as the company operates within the jurisdiction of Vijay Nagar police station. Lastly, it has been mentioned that the petitioner is a mother of infant breast feeding child and was on maternity leave at the time when said raid took place and therefore, she was not present in the office and join the investigation. On these grounds the FIR has been sought to be quashed.

4. In reply to the petition on behalf of the respondent/State, it has been submitted that the crime branch was well within its right to raid the office of petitioner upon receipt of a credible secret information to the effect that the petitioner company has cheated and received many individuals causing financial losses to them by running the aforesaid investment adviser business. When the crime branch raided the office, no documents pertaining to registration with SEBI KYC and other such documents were available. The petitioner was absconding and hence, investigation was initiated in the matter. The statements of various employees were obtained who gave out the statements that such employees were directed to change their names and talk to various customers encouraging them to invest in shares. These employees were only under graduates who are not qualified technically or otherwise to be financial advisers to offer financial advise to any one therefore the chances of mishandling of funds of various investors could be ruled out.

5. In the reply, it is further submitted that as per the Regulations of SEBI termed "Investor Adviser Guidelines, 2013", the

qualifications of a investment adviser has been specified and none of the employees having qualification to indulge in investment advise to the customers. During the investigation, it was found that some of the employees who are offering investment advise to customers did not hold NISM certificate nor did they possess any such degree or qualification mandated by SEBI. The investment advise involves, thorough market analysis, which an undergraduate employee would not be able to do, if he does not hold the requisite qualifications. Many of the customers of this company had lodged details of the company on the SEBI portal stating that the company made them to invest huge amount of money and their ill advise caused heavy losses. The clients were assured huge profits. The company was handling and operating jobs of execution and investment adviser together, which is prohibited as per SEBI guidelines. The company has charged exorbitant fees from customers for rendering advise by any qualified persons. It has been further mentioned that more than 20 clients have complained to the SEBI that they were cheated by the company. An officer incharge of the police is empowered and authorized to investigate any cognizable offence and hence the contention of the petitioner that the crime branch did not have any locus to register and investigate the matter is devoid of any merit.

6. In reply, it has been further submitted that it is a settled position of law, that a proceeding under Section 482 of Cr.P.C, seeking quashment of FIR at the investigation process, does not clarify the intention of the motive by the Court. A Division Bench of

the High Court at Gwalior in M.Cr.C.No.1869/2012 vide judgment dated 26.11.2014 has been referred too in which it has been held that even such activities promising return of profits upon soliciting deposits in the form adviser fee / royalty would clearly tantamount to offence under the provisions of PID Act and at the stage of investigation, no quashment of FIR can be made since the facts leading to any conclusion would come only when investigation is completed. Regarding submission that compliance of Section 6(2) of PID Act has not been made, the respondent has referred to Annexure R-1/4 in which the Superintendent of Police has expressly permitted to carry out the investigation in the present matter. It has been submitted that investigation of cognizable offence is a right and investigation agency and investigation is still under process and hence, this petition seeking quashment of FIR and subsequent proceedings is premature.

7. Both the parties to the petition have submitted the documents in support of their cause. The question before this court is whether in view of the submissions made on behalf of the petitioner, the FIR registered against the petitioner deserves to be quashed.

8. The petitioner has pointed out to the certificate issued by SEBI, which is dated 24.9.2018, wherein Alka Shrivastava (petitioner) has been granted certificate of registration as an investment adviser, running her trade named as “Money Secure Investor Investment Adviser”. The petitioner has annexed NISM certificate (National Institute of Securities Markets) issued by

National Institute of Securities Markets. KYC document (Annexure A/4) has also been submitted by the petitioner in which number of guidelines for operating as investor adviser have been prescribed.

9. Learned counsel for the petitioner has invited the Court's attention to the provisions of SEBI Act, 1992. Section 23 to 28 of which specify the consequence of violation of the Regulations of SEBI. Section 26 of the SEBI Act provides that no Court shall take cognizance of any complaint against the company unless the complaint is filed by SEBI Board. Hence, learned counsel submits that crime branch could not have registered an FIR without the complaint by SEBI Board. Learned counsel for the petitioner further submits that barely suffering losses on shares which have been purchased does not imply that there was intention to deceive the customers. The share markets are prone to highs and lows and therefore, if a customer suffers losses in share, it cannot be stated that there was intention to cheat him. Further, for attracting provision of Section 420 of IPC, intention to deceive should exist from very beginning. It is further been submitted that the raid could have been conducted only after lodging of FIR, but in this case a reverse pattern has been followed, ie., the raid was conducted and then FIR was registered.

10. As far as the present matter is concerned, the complainant has not suffered at the hands of the petitioner and her firm namely "Money Secure Investor Investment Adviser". He has lodged a complaint on the basis of surmises that in the grab of such trade,

innocent investors are being duped and on that basis an FIR has been registered.

11. Learned Public Prosecutor for the Stat has submitted that reasonableness and credibility of information is not a condition precedent for registration of a case by police. The only condition which is sine qua non for recording an FIR is that there must be an information and that information must disclose a cognizable offence. Learned Public Prosecutor for the State further submits that the information received is genuine or not, can only be considered after a registration of the case. The Apex Court in the case of **Ramesh Kumari vs. State (NCT of Delhi), 2006 (1) Crimes 229 S.C.** is a relevant case to that effect. Further in **P.K. Lallan Choudhary vs. State of Bihar & Anr., 2006 (SAR) Criminal 934** wherein, it has been also held that in state of registration of FIR, Police Officer concerned cannot embark upon as to whether the information revealed by the informant is reliable and genuine or not. It has further been stated that the Police Officer cannot refuse to register a case on the ground that the information is not relevant or credible. Thus, one can see that once an information as to the occurrence of cognizable offence has been brought to the notice of police, the Police Officer is bound to register the same as FIR and carry out his investigation. However, there is one impediment, which would surface when there is statutory prohibition for the Court to take cognizance.

12. In view of the fact that the aforesaid establishment namely Money Secure Investor Investment Adviser was registered with

SEBI, if the establishment was being run in breach of SEBI Regulations, Rules or Provisions of SEBI Act, 1992, only SEBI Board was authorized to file a complaint before a competent Court and without there being such step taken, no Court could take cognizance in such cases. The relevant portion of SEBI Act, 1992 is as under :-

“**26. (1)** No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.”

13. It thus appears that even if the Investigating Officer continues with the investigation and comes to a final conclusion that a case indeed is made out against the applicant, the Court shall still not be able to take cognizance of the offence because the complaint has not been filed by SEBI Board and such offences which are described under SEBI Act, 1992 can only be tried by Special Court. Section 26(B), 26(d) and 26(D)(1) of the Act is relevant which reads as under :-

Offences triable by Special Courts.

“**26B.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.”

Appeal and revision

“**26C.** The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court.

“**26D.** (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973. (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.”

14. In the same Act, it has been provided in Section 27 that where the offence has been committed by the Company then every person who at the time the offence was committed, was Incharge of, and was responsible to the Company for the conduct of the business of the Company as well as the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against the punished accordingly.

15. As far as the present case is concerned, the complaint has not been lodged by any complainant who has been cheated by the Company. The complaint has been lodged by a broker who also indulges in similar activities. Thus, offence of cheating and breach of trust is not made out. Further the provisions of “PID Act”, it is imperative to show that the aforesaid company had taken deposits from the customers with a promise to give huge returns in lieu of such deposits. However, the company has been charging fees for rendering advise and the fees cannot be termed to be 'deposits' unless some victim so alleges. We have already seen that police is bound to register an FIR when information is received regarding commission

of cognizable offence and credibility or otherwise of such information cannot be looked into at the time of registration of an FIR, but it is also been seen that police would not be able to file a charge sheet in such matters because, the Court can take cognizance only on the basis of SEBI Board. In the case of **Milan Bhai Manu Bhai Shah vs. State of Gujarat** order dated 12.3.2018, (Gujarat High Court) passed in Special Criminal Application No.1841/2018, following observations were made :-

“The law in this regard is well settled. Although the police has power to investigate the offence alleged against the applicant and charge sheet has been filed, the Court will not be able to take cognizance in view of the specific bar. The investigation carried out by the police can be used for the purpose of filing a complaint in writing. To be precise whatever material has been collected by the Investigating Officer could be used by the authority for the purpose of filing a complaint before the competent Court.”

16. The Court in para 9 of the aforesaid case observed as under :-

“In the result the writ application succeeds and is hereby allowed and the proceedings of the Sessions Case pending before the City Sessions Court, Ahmedabad are hereby ordered to be quashed. All consequential proceedings pursuant thereto stand terminated.”

17. It is clarified that it shall be open for the authority concerned to initiate appropriate fresh proceedings in accordance with law, before the appropriate forum.

18. In the case of **Kanwardeep Singh vs. State of West Bengal** order dated 8.10.2002 Civil W.P.No.2488/2002, (Calcutta High Court), a petition under Section 482 of Cr.P.C was filed praying for quashment of FIR as well as investigational proceedings in six cases, five of which were initiated on the basis of private complaint and one

was started by police suo motu and quashment application was filed mainly on the ground that no case was made out in the FIR and the allegations of cheating, breach of trust etc are without any basis and that there is no reason to investigate the case in as much as a separate complaint has been filed by the Securities and Exchange Board of India (SEBI) under Section 56(3), 63 and 68 of the Companies Act, 1956. The State in this case had appeared and made submissions that a prima facie case under Sections 420, 406, 468, 471, 421 and 120B of IPC having been established, the extra ordinary power under Section 482 of the Code should not be exercised at the initial stage of the investigation.

19. The Court in para 48 has observed as under :-

“ I am not unmindful of the fact that SEBI was set up for all such purposes and SEBI Act, 1992, came into force w.e.f. 30.1.1992 and the preamble of the Act explains the objective which is an Act to provide for establishment of a Board to protect the interest of investors in securities and to promote the development of and to regulate the security market and for matters connected therewith or incidental thereto.”

20. Further in para 51 the final conclusion was made which reads as under :-

“**51.** In the result, the First Information Reports and the investigations impugned in all the six cases are hereby quashed.”

21. Learned Public Prosecutor for the State has filed a citation of *State of Tamil Nadu vs. S. Martin & Ors.*, (2018) 5 SCC 718 in which pursuant to an information received by police that several crores of rupees of unaccounted money was stashed in the house of A/1, a raid was conducted and cash amounting to Rs.7,20,05,000/-

stored in 3 bags was found. It was further found that accused A/1 had admitted that he and his associates had illegally printed lottery tickets of 3 States and sold the same without obtaining any permission and in the process had amassed enormous profit and cash. In this matter, Rs.50,00,000/- were also seized from accused A/3. Accused A/1 was immediately arrested and crime was registered against A/1 under the provisions of Section 294A, 420 and 120B of IPC. Accused A/2 and A/3 filed a petition under Section 482 of Cr.P.C, for quashing the case in its entirety. This petition was allowed. The Supreme Court held such quashment to be completely incorrect and uncalled for and held that while investigation was still incomplete, High Court ought not to have interfered in present case.

22. However, the aforesaid citation would not come to the rescue of State because of the fact that the matter did not pertain to violation of the provisions of SEBI Act, 1992.

23. On the contrary, learned counsel for the applicant has placed reliance on the judgment of the Apex Court in the case of ***State of Madhya Pradesh vs. Laxmi Narayan & Ors.*** passed in Cri. Appeal No.349/2019 order dated 5.3.2019 wherein the Apex Court had discussed the ambit and scope of Section 482 of Cr.P.C. In another citation ***Nirmal Seed's Pvt. Ltd. vs. State of M.P. & Ors.*** passed in M.Cr.C.No.18348/2017 order dated 25.10.2018, the FIR was quashed in view of the following observations :-

“11.After considering the facts and material placed before this Court in the present petition is neither sufficient to disclose cognizable offences against the applicant, nor

the ingredients of Section 420 of I.P.C. and 3/7 of Essential Commodities Act, the investigation carried out by the police authorities is to be held as bad in law, therefore, is to be quashed. The Apex Court, in *State of Haryana and Ors. V. Ch. Bhajanlal and Ors.*, has clearly held that the condition which is sine qua non for recording First Information Report is that there must be an information and that information must disclose a cognizable offence.”

24. In the case of ***Sushil Sethi & Anr. vs. The State of Arunachal Pradesh & Ors.*** Passed in CRA.No.125/2020, the Apex Court cited the celebrated judgment of ***State of Haryana vs. Bhajan Lal, 1992 Suppl. (1) SCC 335*** with regard to ambit and scope of Section 482 of Cr.P.C in which the guidelines for quashment of FIR under Section 482 of Cr.P.C were delineated and the following guidelines is relevant as far as the present case is concerned.

“6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

25. The aforesaid guidelines would be resorted in the present case as well.

26. Learned Public Prosecutor for the State submits that in the raid it was found that there were number of undergraduate employees working on computers giving their advise to the customers regarding the shares in which they should invest their money and prima facie it was clear that the company was being run by unqualified employees, which would amount to cheating the customers.

27. However, the aforesaid state of affairs would again attract violation of provision of SEBI (Investment Advisers) Regulations,

2013, as also breach of provision of SEBI Act, 1992 and once these provisions are attracted, only SEBI Board can lodge a complaint before the competent Court.

28. Learned counsel for the applicant also submits that investment in share market does not guarantee only profits and there are market risks involved and the offence of cheating cannot be made out unless the prosecution able to show that intention of deceive existed from the very beginning. Learned counsel for the applicant submits that as per document No.5869/2020, complaints lodged with SEBI against the Company run by the appellant, have all been resolved and there is no complainant who is a victim in the present case.

29. Learned Public Prosecutor for the State submits that the police, during the course of investigation shall seek to get in touch with investors and there is all probability that many of these investors may come out against the company.

30. Considered.

31. Such proposition by the learned Public Prosecutor for State is like putting cart before the horse. The police in the present case has registered FIR not on the basis of complaint of a victim and now seeks to find whether there are any victims or not, which is absolutely against the ethos of investigative processes.

32. We have seen that the provisions of IPC and PID Act are not attracted prima faice in this case, that there is an statutory bar against taking cognizance by Court for any such offence, which is in the domain of SEBI Act, 1992, which requires complaint to be filed by

SEBI Board. This case is squarely relates to breach of provisions of SEBI Act, 1992 and SEBI Regulations, 2013 and only Special Court is empowered to take cognizance on the basis of complaint filed by SEBI Board. The police was not authorized to register an FIR in such case because there is a specific statutory bar in such matters.

33. What the police could have done was that bring to the notice of SEBI Board the alleged violation being committed by the applicant Company. After providing vital information and inputs to the SEBI Court, the matter would have been looked into by SEBI Board only and appropriate complaint could have been filed by SEBI Board before the competent Special Court. However, instead of doing so, the police has embarked upon registration of FIR in such a case and by doing so, has travelled beyond the scope of its competence and jurisdiction.

34. Consequently, the FIR bearing Crime No.05/2020, registered at Police Station Crime Branch, Indore stands quashed along with all the subsequent proceedings.

35. The application stands allowed in the aforesaid terms.

(SHAIENDRA SHUKLA)
JUDGE

SS/-