

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 12th OF MARCH, 2024

CRIMINAL REVISION No. 3600 of 2021

BETWEEN:-

- 1. PINKI KELWA, AGED ABOUT 29 YEARS,
OCCUPATION: BUSINESS H.NO 194 SCHEME NO. 71
(MADHYA PRADESH)**
- 2. ASHUNJAY KELWA, AGED ABOUT 28 YEARS,
OCCUPATION: BUSINESS HOUSE NO. 194, SCHEME
NO. 71 (MADHYA PRADESH)**
- 3. GAURAV SHRIVASTAV, AGED ABOUT 29 YEARS,
OCCUPATION: BUSINESS 163, PREMIUM PARADISE,
NEAR AURBINDO HOSPITAL (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI HARSHWARDHAN SHARMA, ADVOCATE

AND

- 1. THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THR. P.S. TUKOGANJ (MADHYA PRADESH)**
- 2. RAJKUMAR JATAV S/O NOT MENTION THROUGH
SHO PS SOUTH TUKOGANJ (MADHYA PRADESH)**

.....RESPONDENTS

***(BY MS. HARSHLATA SONI, PANEL LAWYER APPEARING ON BEHALF OF
ADVOCATE GENERAL).***

*This application coming on for admission this day, the court
passed the following:*

ORDER

01] This petition has been filed by the petitioners under Section 397 read with 401 of the Criminal Procedure Code, 1973 against

the order dated 31.8.2021, passed by the 19th Additional Sessions Judge, Indore in S.T.No.01/2021 (Annexure A/1) whereby, the application filed by the petitioners under Section 227 of the Cr.P.C. for their discharge has been rejected and the charges have been framed for the offences under Sections 420, 406 of the Indian Penal Code, 1860 and under Section 6(1) of Madhya Pradesh *Nishepakon Ke Hiton Ka Samrankshan Adhiniyam*, 2000 (hereinafter referred to as the Adhiniyam, 2000).

02] The present revision has been filed on the ground that even on bare perusal of the FIR as also the entire charge sheet, it reveals that the petitioners have not committed any offence, and the only allegations against them are that on 05.03.2020, when the complainant/respondent No.2/Rajkumar Jatav, Sub-Inspector of Police at Police Station-South Tokoganj, Indore visited the petitioners' office and found various irregularities in their business dealings, which led him to lodge the FIR under the aforesaid offences.

03] In the initial enquiry, it was found that the petitioner No.1 Pinki Kelwa and her associates were running a financial investment advisory firm without having any certificate issued by the competent authority.

04] Shri Harshwardhan Sharma, counsel for the petitioners has submitted that after the aforesaid FIR was lodged, charge sheet has also been filed and the Police has also seized certain documents, which clearly demonstrate that the petitioners were carrying on a legitimate business after obtaining due certificate from the Securities

and Exchange Board of India (hereinafter referred to as “the SEBI”). The police had also filed a copy of the certificate issued by the SEBI dated 08.10.2018, in favour of the petitioner No.1-Pinki Kelwa, who is the proprietor of the firm, and the other certificates are issued by the National Investment Security Market (NISM). The date of issue of the certificate is 30.11.2018, which was valid up to 25.3.2022; whereas the FIR has been lodged on 05.03.2020.

05] Counsel for the petitioners has also drawn attention of this Court to the certificate issued by the SEBI regarding registration as Investment Adviser in favour of the petitioner No.1-Pinki Kelwa, which is dated 08.10.2018, and similarly other documents have also been filed along with the charge sheet.

06] Counsel for the petitioners has further submitted that there was no reason for the petitioners not to keep all the documents in their office when the complainant- Respondent No.2-Raj Kumar Jatav along with the Sub-Inspector Atul Solanki, and other police personnel visited the office of the petitioners. It is further submitted that the FIR has been lodged with ulterior motive to harass the petitioners when it was found that they had all the relevant documents available with them. It is also submitted that the office of the petitioners was illegally sealed by the said police for which Writ Petition No.11072/2020 was preferred by the petitioner, which was allowed by this Court on 11.09.2020, directing the respondents to allow the petitioner No.1 to open her financial investment advisory company. Counsel has also submitted that since the office remained closed for a

period from 05.3.2020 to 12.09.2020 due to illegal sealing of the same, which led many investors to believe that the petitioner's firm has committed fraud with them by closing the office, and thus, when the respondents sought a certificate from the SEBI regarding the complaints if any pending against the petitioners' firm, it was informed by the SEBI that as on 12.09.2020, total of 98 complaints were made against the petitioners, out of which, only 7 complaints are still pending as on 14.9.2020.

07] Counsel for the petitioners has further submitted that subsequently, the aforesaid seven complaints have also been resolved, which is apparent from the status of Investor grievances redressal through SEBI's Complaints Redress System named as 'SCORES', and as per the complaint status as on 09.02.2024, there is no complaint pending against the petitioners. Counsel has also submitted that there was no reason for the said police personnel to visit the office of the petitioners as there was no complaint filed by any person by that time regarding any fraud being committed by the petitioners. It is also submitted that even the statements of the persons, who had made investments in the share market through the petitioners' firm were not filed along with the charge sheet, and the statements have been filed only with the supplementary charge sheet, and even the copy of those statements have not been provided to the petitioners. Counsel has submitted that even assuming the aforesaid statement to be correct, in that case also, no case of fraud having committed by the petitioners can be culled out from the documents filed along with the

charge sheet.

08] Counsel has also submitted that since the petitioners were running a legitimate business, and were already having all the permissions, according to Section 26 of the SEBI Act, 1992 the cognizance could not have been taken by the trial court for any offence punishable under the SEBI Act except on a complaint made by the Board. Counsel has further submitted that the Board has never approached the police station Tukoganj, Indore to take any action against the petitioners, and in fact, the Board has already given a clean chit to the petitioners, which is also apparent from their portal in which, there are no complaints pending against the petitioners till date.

09] Counsel has further submitted that this Court has had the occasion to consider Section 26 of the SEBI Act, 1992 in the case of *Alka Shrivastava vs. State of Madhya Pradesh* passed in **M.Cr.C.No.23883/2020 decided on 22.09.2020** wherein, after taking into account the provisions of Section 26 of the SEBI Act, 1992 and the other provisions of the SEBI Act, this Court has held that the police has no authority to take action against the accused person, and the FIR was also quashed.

Thus, it is submitted that in the present case also, the impugned order be set aside and the FIR as also all the consequential proceedings be quashed.

10] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is

made out. However, it is also submitted that the complainant-respondent No.2/Raj Kumar Jatav, Sub Inspector, Police Station South Tukoganj, Indore has also died and it is also not denied that at the time when the FIR was lodged, there was no complaint pending against the petitioners' firm.

11] Heard the counsel for the parties and also perused the record.

12] Having considered the rival submissions, perusal of the charge sheet, as also the decision rendered by this Court in the case of Alka Shrivastava (supra), this court finds that in the aforesaid case, while quashing the FIR, it was held as under:-

“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 have 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.

xxxxxxx26. 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 deceives 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.

xxxxxxxxxx33. 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”.

(emphasis supplied)

13] On perusal of the aforesaid petition, as also the documents filed along with the charge sheet, it is found that since the petitioners had all the requisite permission obtained from SEBI to run the business of advisory, and there was no reason for the concerned police officers to visit the office of the petitioners' firm and lodge the FIR as aforesaid. It is also apparent that the said police officers had also not bothered to go through the SEBI Act, and even otherwise, it is found that the FIR was lodged at a false premise of fraud having committed by the petitioners, which had no basis, which is also apparent from the subsequent documents obtained by the prosecution, and apart from that, the court could also not have taken the cognizance of the case when the complaint was not made by the Board. It is not a case where a fraud has been played by the petitioners and without obtaining any permission from SEBI and other authorities, advisory company has been opened, in which case, the provisions of the Indian Penal Code could have been attracted. However, looking to the permissions already on record obtained by the petitioners, this Court has no

hesitation to come to a conclusion that no case under Sections 420, 409 of the I.P.C., 1860 and Section 6 (1) of the *Adhiniyam*, 2000 can be said to be made out as the entire proceeding was initiated with mala fide intentions by the complainant.

14] Resultantly, the criminal revision stands ***allowed*** and the impugned order dated 31.08.2021 passed by the 19th Additional Sessions Judge, Indore in S.T. No.01/2021 is hereby set aside and the FIR and the charges framed against the petitioners for offence under Sections 420, 409 of the I.P.C.,1860 and Section 6 (1) of Madhya Pradesh *Nishepakon Ke Hiton Ka Sarankshan Adhiniyam*, 2000, as also all the consequential proceedings are hereby quashed.

15] With the aforesaid, Criminal Revision stands ***allowed***.

16] All the pending interlocutory applications stand ***disposed of***.

(SUBODH ABHYANKAR)
J U D G E