IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 1297 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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THAKOR JIGARJI ISHVARJI & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR PRATIK B BAROT(3711) for the Applicant(s) No. 1,10,11,2,3,4,5,6,7,8,9
DS AFF.NOT FILED (N) for the Respondent(s) No. 2
K.M. ANTANI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 27/07/2026

JUDGMENT

1. Rule fixed forthwith. Learned APP waives service of rule on behalf of the respondent – State.

2. The applicants have invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing and setting aside of the impugned FIR being C.R. No. 11206075220452 of 2022 registered with Visnagar Town Police Station, District Mehsana, for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 474, 114 and 120B of the Indian Penal Code, Sections 13, 14, 19 and

23(1)(b), (c), (d), (e), (f), (g) and (i) of the Securities Contracts (Regulation) Act, 1956, and Section 66D of the Information Technology Act, along with all consequential proceedings arising therefrom.

3. The brief facts as narrated in the FIR are to the effect that:

(3.1) Respondent No.2 – original first informant as in capacity of Assistant Sub-inspector serving with Visnagar Town Police Station, upon a secret information received by them that applicant No.1 – Thakor Jigarji Ishvarji by calling the persons in the house of her sister, namely, Thakor Komalben Ishvarji, and by giving them the mobiles as well as dummy sim cards and keeping a search on the market plus application downloaded in his mobile, applicant No.1 was giving tips for earning more money without procuring any valid licence from the Stock Market, all the applicants are illegally indulged into a “dabba trading” in such premises as also are maintaining records to that effect, soon thereafter, after a search warrant was procured, raid was carried out at the said premises wherein the present applicants were found and arrested from the scene of offence with mobile phones, sim cards, account books, which resulted into lodgment of the impugned FIR as against twelve arrested accused as along with one Kripalsinh, in nutshell with a case that with the help of market plus application downloaded, a financial loss is caused to Government of India and SEBI by artificially shooting the prizes of shares and thereby deriving monetary gain out of such illegality.

4. Learned advocate Mr. Ravi Mandaliya, appearing on behalf of learned advocate Mr. Pratik B. Barot for the applicants, submitted that, as per the prosecution case, the applicants are alleged to have been involved in dubba trading. It is alleged that the raiding party apprehended the applicants at the house of the sister of applicant No.1 and recovered certain articles, including mobile phones, account books and other incriminating material. However, even if the allegations contained in the FIR are accepted in their entirety, no offence under Sections 406 and 420 of the Indian Penal Code is made out. It was submitted that there was neither any entrustment of property nor any dishonest misappropriation so as to attract the ingredients of Section 405 IPC. Likewise, the essential ingredients of the offence of cheating, namely dishonest or fraudulent inducement, are conspicuously absent. Hence, no case is made out against the applicants under Sections 406 and 420 IPC.

5. Learned advocate further submitted that, in view of Section 26 of the Securities Contracts (Regulation) Act, 1956, no Court can take cognizance of any offence under the said Act except upon a complaint made by the competent authority as contemplated under Section 2(d) of the Code of Criminal Procedure, 1973. It was contended that the present proceedings have been initiated on the basis of an FIR lodged by the investigating agency and not on a complaint by the competent authority. Therefore, in view of the statutory bar contained in Section 26 of the Securities Contracts (Regulation) Act, 1956, the impugned FIR is without jurisdiction and deserves to be quashed and set aside. It was, accordingly, urged that the FIR

and all consequential proceedings arising therefrom be quashed and set aside.

6. Per contra, learned APP submitted that, insofar as the bar under Section 26 of the Securities Contracts (Regulation) Act, 1956 is concerned, the legal position is well settled. However, he relied upon the statements of various witnesses, including those in whose names the dummy SIM cards were procured, to contend that the ingredients of the offences under the IPC are still made out. It was, therefore, argued that the proceedings, insofar as they relate to the offences under the IPC, ought not to be quashed.

7. Heard learned advocates for the respective parties.

7.1 Section 26 of the Securities Contracts (Regulation) Act, 1956, reads thus:

> *"26. **Cognizance of offences.**—*
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> *(1) No Court shall take cognizance of any offence punishable under this Act or any rules, regulations or bye-laws made thereunder, save on a complaint made by the Central Government or the State Government or the Securities and Exchange Board of India or a recognized Stock Exchange or by any person.*
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> *(2) No Court inferior to that of a Court of Session shall try any offence punishable under this Act."*

7.2 A plain reading of Section 26 of the Securities Contracts (Regulation) Act, 1956 would indicate that no Court can take cognizance of any offence punishable under the said Act or the rules, regulations or bye-laws framed thereunder, except upon a complaint made by the Central Government, the State Government, the Securities and Exchange Board of India, a recognized Stock Exchange, or any other person authorized under the provision.

7.3 Even if it is assumed for the moment that the respondent No. 2 herein would fall within the ambit of 'any person'. The issue which falls for consideration of this Court is, whether the Court before whom the charge-sheet would be filed, can take cognizance of the offence. The word 'complaint' figuring under Section 26 of the Act means, a complaint in writing before the Court as defined under Section 2(d) of the Code of Criminal Procedure, 1973. The Court is conscious of the fact that Section 25 makes the offence under Section 23 of the Act a cognizable offence. Since Section 23 of the Act is a cognizable offence, police would definitely have power to investigate. In the considered opinion of the Court, the Sessions Court will not be able to take cognizance on the police report in view of the specific bar contained in Section 26 of the Act. The same is the position with Section 26 of the Securities and Exchange Board of India Act, 1992.

7.4 The law in this regard is well settled. Although the police has power to investigate the offence alleged against the applicants and if charge-sheet is 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 before the appropriate court. To be precise, whatever materials have been collected by the Investigating Officer could be used by the authority for the purpose of filing a complaint before the competent court.

7.5 Regarding the provisions under the Securities Contract (Regulation) Act, upon considering Section 26 of the Act, it is clear that the trial court cannot taken cognizance of the offenses based on a police report. Section 26 of the Act states: (1) No court shall take cognizance of any offense punishable under this Act, or any rules, regulations, or bye-laws made thereunder, except on a complaint made by the Central Government, the State Government, the Securities and Exchange Board of India, a recognized stock exchange, or any other authorized person. (2) No court inferior to that of a Court of Session shall try any offense punishable under this Act.

7.6 In view of the above, a plain reading of Section 26 of the Act suggests that no court can take cognizance of any offense punishable under the Act except on a complaint made by the Central Government, the State Government, the Securities and Exchange Board of India, a recognized stock exchange, or any authorized person. Therefore, no case is made out under the provisions of the Securities Contract (Regulation) Act.

8. Coming to the second contention, the Court is of the view

that even if the entire case put up by the prosecution is accepted as true, none of the ingredients to constitute the offence of criminal breach of trust or cheating are spelt out inasmuch as there is no direct evidence or material to suggest that there was any entrustment of property. The allegations in the complaint is of engaging in fraud and misconduct, but nowhere is it alleged that present applicants pocketed money by causing a loss to anyone or obtaining wrongful gain. Even if this fact is accepted, it constitutes merely a breach of the Securities Contract (Regulation) Act, which has been wrongly characterized as criminal breach of trust. Criminal breach of trust, as defined in Section 405 of the IPC, is as follows:

> *"Whoever, being entrusted with property, or having dominion over property, dishonestly misappropriates or converts that property to their own use, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which they have made concerning the discharge of such trust, or willfully allows any other person to do so, commits 'criminal breach of trust."*

8.1 In view of the above, it is clear that the applicants have neither caused any financial loss to anyone nor obtained any wrongful gain. The investigating agency has also failed to produce any concrete documents showing financial loss to anyone in support of his argument. Even when asked on what grounds the criminal breach of trust is alleged to have been committed by the applicants, the respondent remained silent. Merely based on the complaint, a case under the provisions of criminal breach of trust was registered, but the investigating agency has not produced any evidence to support this assertion. Therefore, this does not constitute criminal breach of trust, and Section 406 of the IPC is not applicable.

8.2 Further, it is trite that Sections 406 and 420 of the IPC cannot be run together. In this regard, the Court deems it proper to refer to the judgment passed by the ***Hon'ble Apex Court in the case of Delhi Race Club (1940) Ltd. vs State of Uttar Pradesh***, passed in Criminal Appeal No. 3114 Of 2024, wherein the Court observed that criminal breach of trust under Section 406 of the Indian Penal Code (IPC) and cheating under Section 420 of the IPC are distinct offenses and cannot co-exist. The Court also observed that if the complainant had a claim for a specific amount, they should have filed a civil suit instead of filing a criminal complaint.

8.3 Moreover, so far as offence under Section 420 of the IPC is concerned, it is appropriate to refer to the decision of the ***Hon'ble Apex Court in the case of Rekha Jain vs. The State of Karnataka & Anr. reported in 2022 LiveLaw (SC) 468***, wherein the Hon'ble Supreme Court held that, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. Further, in the case of ***Sarabjit Kaur vs. State of Punjab & Anr. reported in***

(2023)5 SCC 360 has held in paragraph No.13 as follows:

> *"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurize parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings*

to continue would be an abuse of process of the Court."

9. In the case of State of ***Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335***, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held in para 102 as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Art. 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :*
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> > *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
> >
> > *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an*

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(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 proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9.1 For the aforesaid discussion, and in view of the settled legal position, the Court is of the opinion that the case on hand clearly falls within some of the parameters laid down in the aforesaid decision, which would required indulgence of this Court.

10. In the result, the present application succeeds and is allowed in part. The impugned FIR being C.R. No. 11206075220452 of 2022 registered with Visnagar Town Police Station, District Mehsana, for the offences punishable under Sections 406 and 420 of the Indian Penal Code and Sections 13, 14, 19 and 23(1)(b), (c), (d), (e), (f), (g) and (i) of the Securities Contracts (Regulation) Act, 1956 is only hereby quashed and set aside qua the present applicants, along with all consequential proceedings arising therefrom. Rule is made absolute accordingly.

11. It is made clear that, insofar as the remaining offences, the investigating agency may proceed with the investigation and file the charge-sheet in accordance with law.

12. It is clarified that it shall be open for the authority concerned to initiate appropriate proceedings afresh against the writ applicants herein, in accordance with law.

(P. M. RAVAL, J)

MOHD SAIF ULLAH