

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION NO. 4169 of 2016**

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KALPESHBHAI JAYANTIBHAI SHAH....Applicant(s)
Versus
STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR SN SOPARKAR, SENIOR COUNSEL WITH MR CHETAN K PANDYA,
ADVOCATE for the Petitioner.

PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 14/06/2016

ORAL ORDER

1. Leave to amend. Necessary amendment be carried out forthwith.

2. The present petition is for quashment of the first information report being I-C.R. No.145 of 2016 registered with 'A' Division Police Station, Rajkot, preferred by the petitioner, who is the Director of Market Creators Limited, a company incorporated under the provisions of the Indian Companies Act, 1956. It is a member of Bombay Stock Exchange (for short 'BSE') and National Stock Exchange India Limited (for short 'NSE'). It is the say of the petitioner that the complainant's son had made a complaint to the

Investors' Grievance Redressal Committee of BSE on December 11, 2015, claiming loss of Rs.1,63,557-99 ps., whereas, in fact, the said Committee concluded that there is a profit of Rs.10,310/-. He had also made a complaint to the Central Depository Services (India) Limited (for short 'CDSL') for illegal debit from his demat account. After considering the reply of the petitioner-Company, the CDSL closed the complaint. Thereafter, the very person also made a complaint to the Investors' Service Cell of NSE, wherein it has been held that without prejudice to the further legal options of either parties, the claim of the complainant therein deserved to be admitted for Rs.35 lakh and to secure the claim of Rs.35 lakh from the account of the petitioner. It is also the say of the petitioner that the petitioner was to obtain Handwriting Expert's opinion on the basis of the original KYC form, demat account opening form, Authority letter for payin and Limited power of attorney, etc., whereby it has been opined by the Handwriting Expert that all the signatures on the

said documents are made by the same person.

3. Shri S.N. Soparkar, learned Senior Counsel appearing with the learned counsel Shri Chetan Pandya for the petitioner, has urged that the award has already been given by the Arbitrator on June 06, 2016, whereby the application of the complainant has been dismissed. What has been directed to the NSE is to investigate deficiency in the practice adopted by the company. He has further urged that the complainant has already claimed the loss before the Income-tax authority and, therefore, he cannot disown the transactions which had been undertaken.

4. Let a notice be issued to the respondents, returnable on June 30, 2016. Till returnable date, the Investigating Officer shall follow the *dictum* of the Apex Court rendered in the case of ***Joginder Kumar v. State of Uttar Pradesh and others, reported in (1994) 4 SCC 260.***

It is ensured to this Court by the learned Senior Counsel appearing for the

petitioner, on instructions from the petitioner, that the petitioner will not withdraw the amount of Rs.35 lakh, even if on expiry of limitation period, no appeal is preferred.

The formal service of notice is waived by the learned Additional Public Prosecutor on behalf of the respondent No.1-State.

Direct Service is permitted qua the respondent No.2. To be served through the concerned Police Station.

(MS SONIA GOKANI, J.)

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