

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 3825 of 2017****With****R/CRIMINAL MISC.APPLICATION NO. 2765 of 2017**

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SHAILENDRAJITSINGH

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR DHAVAL SHAH(2354) for the Applicant(s) No. 1

NOTICE SERVED THRU CONCERNED POLICE STN for the Respondent(s)

No. 2

MS. MAITHILI MEHTA ADDL. PUBLIC PROSECUTOR(2) for the

Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 13/07/2021****ORAL ORDER**

Heard learned Senior Advocate Shri R.R Marshall on behalf of learned Advocate Shri Dhaval Shah in Criminal Misc. Application No. 3825 of 2017 and on behalf of learned Advocate Shri Dilfraz Havewalla in Criminal Misc. Application No. 2765 of 2017, learned Additional Public Prosecutor Ms. Maithili Mehta for the respondent-State and learned Advocate Shri Pratik Barot on behalf of the complainant.

2. It is stated by learned Advocate Shri Barot that he has replaced learned Advocate Ms Mousami K. Vala on behalf of the applicant and whereas Ms Vala had requested this Court to delete her name from the application since she no more represents the complainant. Considering the same, the name of learned Advocate Ms Mousami K. Vala, may be deleted and the name of learned Advocate Shri Pratik Barot may be

shown as learned Advocate for the complainant.

3. By way of the present application, the applicants challenge criminal complaint No. I-25 of 2017, registered with Salabatpura Police Station, District Surat on 07.01.2017 for offences punishable under Sections 406, 420, 506 (2) and 114 of the Indian Penal Code. It would be pertinent to mention here that both the petitions challenge self same complaint.

4. Learned Senior Advocate Shri R.R Marshall on behalf of the applicants, has submitted that the applicants in Criminal Misc. Application No. 2765 of 2017 are Directors and an employee of one M/s Voonik Technologies Private Limited (hereinafter referred to as "VTPL") and whereas it is submitted that except for applicant no. 4, the complainant has not met any of the other applicants and further more he has submitted that there are no specific allegations leveled against any of the applicants of having induced the complainant. He further submits that the applicant in Criminal Misc. Application No. 3825 of 2017 is a "Non-executive Nominee Director" who is on the Board of M/s "VTPL" as a nominee of one M/s SEQUOIA India Investment and whereas it is also stated that he is residing in Singapore and that he has never met or interacted with the complainant, therefore there was no question of inducing the complainant.

5 Learned Senior Advocate has further taken this Court through the agreement between the parties i.e "M/s VTPL and the complainant as well as his family members who have been named in the complaint as having been the victims of the alleged fraud/ breach of trust by "M/s VTPL and he has

submitted that ultimately the entire dispute is a commercial transaction which has been given colour of a criminal dispute without any basis whatsoever. Learned Senior Advocate further submits that since the stay of investigation as granted by this Court has been inuring in favour of the applicant since February 2017, this Court may continue the same relief till final disposal of the present petition and whereas he further submits that he is ready and willing to finally argue the present application on any date as convenient to this Court.

6. As against the same, learned APP Ms. Mehta, has submitted that while the complaint has been registered in the month of January 2017, the applicant have approached this Court almost immediately and whereas vide interim orders of this Court of February, 2017, since the investigation had been stayed at the threshold itself, practically no investigation has taken place. Learned APP has further requested that the interim relief may be modified by this Court so that the investigation may proceed and at the same time some suitable protection may be granted in favour of the applicant.

7. Learned Advocate Shri Pratik Barot on behalf of the original complainant has adopted the arguments by the learned APP and has submitted that while it is a well settled position that the complainant has not to state every thing in the complaint and the complaint is not akin to an encyclopedia and whereas a prima facie allegation has been made in the complaint for which an investigation ought to have been carried out and on account of interim orders of this Court, the investigation has been stayed at the threshold

which has resulted in grave prejudice to the complainant and ensuring that no material could be unearthed by the investigating officer against the applicants. Learned Advocate has further submitted that ultimately the complainant and the family members of the complainant who have been victim of a fraud/ breach of trust by the website/company, had no other option but to join the Directors since it would be practically impossible for the complainant to find out who are the persons responsible for day to day management of the company more particularly since the complainant and his family members are based at Surat and the complainant company is based in Bangalore. Learned Advocate has further submitted that while the complainant may not have met the other Directors but at the same time the complainant has met the applicant no. 4 in Criminal Misc. Application No.2765 of 2017 Shri Ritesh Shah who is an employee of the company and whereas the investigation officer ought to have investigated with regard to the allegations of inducement against the said applicant.

8. Heard the learned Advocates for the respective parties.

9. Prima facie, this Court is of the considered opinion that since the interim relief has continued in favour of the applicant since February 2017, which is the nature of staying of investigation and since the investigation had not practically started at that stage, therefore it would be expedient in the interest of justice to ensure that the present application is heard and decided finally rather than modifying the interim relief after a period of almost 4 years. Furthermore on merits, in the prima facie opinion of this Court the dispute between the parties appears to be a commercial dispute and whereas

this court also notes the argument of learned Senior Advocate Shri R.R Marshall, that while in the complaint it is alleged by the complainant that an amount of approximately Rs 83 lakhs is to be recovered from “M/s VTPL” but at the same time no civil suit has been preferred by the complainant and thus, there is no legitimate attempt to recover the dues. Furthermore, in view of the fact that the complainant and his family members have admittedly not interacted with any of the applicant except Shri Ritesh Shah, the allegations of inducement may not be possible to be leveled against the said applicants. As far as the applicant Shri Ritesh Shah is concerned as stated hereinabove this Court is of the opinion at this stage, it would be expedient to admit the present application and list the same for final hearing and decide the same rather than modifying the interim relief which is inured in favour of the applicant for roughly around 4 years. In view thereof issue **Rule** returnable on 09.08.2021.

10. Interim relief granted vide order dated 02.02.2017 in Criminal Misc. Application No. 2764 of 2017 and order dated 13.02.2017 in Criminal Misc. Application No. 3825 of 2017 shall continue till final disposal of the petitions.

MARY VADAKKAN

(NIKHIL S. KARIEL,J)