

CRIMINAL MISCELLANEOUS APPLICATION NO. 51 OF 2002.

Mrs. Priya S. Bhobe,
r/o Flat No. F-7-2,
Building No. B,
Model Residency,
St. Inez, Panaji.

... Applicant.

Versus

State through Panaji
Police Station, Panaji.

... Respondent.

Mr. M.S. Sonak, Advocate for the Applicant.

Mrs. W. Coutinho, Additional Public Prosecutor for the
Respondent State.

Coram : P.V. HARDAS, J.

Date : 27th June 2003.

ORAL JUDGMENT.

This application under Section 482 of the Code of Criminal Procedure seeks to quash the prosecution initiated against the present applicant/original accused no. 3 for offences punishable under Sections 420, 406 read with Sections 34 and 109 of the Indian Penal Code. The charge-sheet, which is filed against the present applicant, states that the present applicant had induced the investors to deposit the money in Fixed Deposit with M/s. Speer Finance and Investment Private Limited and, thereby, had abetted the original accused 1 and 2 in the commission of the crime. The original accused 1 and 2 have been substantively charged for offences under Sections 406, 420 read with Section 34 of the Indian Penal Code.

2. The applicant had sought for a discharge before the learned trial Court, which was rejected by the learned trial Court, by the Order, dated 20th June 2000, in Criminal Case No. 206/98/C. The applicant, being aggrieved by the aforesaid Order of the learned Judicial Magistrate, First Class, Panaji, in the aforestated case, filed Criminal Revision Application No. 45 of 2000, which was also rejected by the Judgment of the learned IInd Additional Sessions Judge, Panaji, dated 10th December 2001. The applicant, thus, seeks to assail the Orders of the two Courts below in the present application under Section 482 of the Code of Criminal Procedure.

3. According to the prosecution, original accused 1 and 2, as Directors of M/s. Speer Finance and Investment Private Limited, Panaji, induced the first informant and others to invest Rs. 79,36,487/- as deposits offering them attractive rates of interest ranging from 3% to 5% per month. Initially the accused had paid the amount of interest but, thereafter, the accused stopped paying the interest. The principal amounts, which were invested by the investors, were also not returned to them. Apart from the first informant, about 15 persons had also filed complaints complaining therein that they had been induced by the original accused 1 and 2 to invest various amounts. The present

applicant is alleged to have abetted the commission of the offence.

4. Records and Proceedings of the learned trial Court had been called for and with the assistance of the learned counsel for the parties, I have examined the records and proceedings to determine the material which is against the applicant. Admittedly, in the First Information Report, which is filed by Luis Pereira, which set the investigation moving, the name of the applicant does not figure as an accused. In fact the First Information Report is bereft of any reference to the name of the applicant. The name of the applicant figures only in the Supplementary Statement of Shri Luis Pereira, the first informant. In the said supplementary statement, it is stated that the applicant had approached and had pressed him to deposit the money and had convinced him to pay and, thereby, he had paid another Rs. 1 lakh, belonging to his wife. It is also stated in the supplementary statement that the applicant had come to him on behalf of the original accused no. 2 and had delivered interest also. It is also stated that the applicant had forced the first informant to mobilize money for Speer Finance.

5. There is a statement recorded under Section 161 of the Code of Criminal Procedure of one Mrs. Khan

Laljee. A perusal of the said statement reveals that she has alleged that the present applicant and the original accused no. 2 tried to lure her to invest further sums of money and had offered her higher rate of interest. On the third page of the statement, it is stated that the applicant was aware of what was happening and she alongwith the original accused no. 2 were working jointly to extract more money from them.

6. The perusal of the supplementary statement of the first informant and the statement recorded during investigation of the present applicant would show that, prima facie, there exists material in support of the allegation that the present applicant had abetted the commission of the offence by original accused 1 and 2. The meticulous examination of the material, at this stage, to test it as against the other material, is an exercise which is impermissible. The allegations, which have been referred to earlier by me, according to me, are sufficient to come to a prima facie conclusion regarding the commission of the offence as alleged.

7. The two Courts below have addressed themselves to the material, which was there against the applicant, and have found that prima facie the involvement of the applicant has been made out. This being an application under Section 482 of the Code of Criminal Procedure, I

am not inclined to upset the findings of the two Courts below as, according to me, the view taken by the two Courts below is justified in the present case.

8. The findings which are recorded by the two Courts below and this Court are prima facie findings at this stage and the Courts below should not be influenced by any observations made in the said Judgments while deciding the case of the applicant on merit.

9. In the result, this application under Section 482 of the Code of Criminal Procedure is dismissed with no order as to costs. Records and Proceedings be remitted to the trial Court immediately.

ed's.

(P.V. HARDAS)
JUDGE.