

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 9597 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2.	To be referred to the Reporter or not ?	No
3.	Whether their Lordships wish to see the fair copy of the judgment ?	No
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5.	Whether it is to be circulated to the civil judge ?	No

DAYALJIBHAI TULSIDAS PATEL & 1 - Applicant(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)****Appearance :**

MR AM PAREKH for Applicant(s) : 1 - 2.

PUBLIC PROSECUTOR for Respondent(s) : 1,

MR ND GOHIL, CENTRAL GOVT. STANDING COUNSEL for Respondent(s) : 2,

MR PURVISH J MALKAN for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 31/01/2012****ORAL JUDGMENT**

[1.0] Present Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) has been preferred by the applicants – original accused to quash and set aside the impugned FIR being C.R. No.I-90 of 2003 registered with GIDC Vatva Police Station filed

by the Registrar of Companies, Ahmedabad for the offences punishable under Sections 403, 406, 415, 148, 420, 424 and 114 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

[2.0] That respondent No.2 herein – Registrar of Companies, Gujarat has lodged the impugned FIR being CR No.I-90 of 2003 with GIDC Vatva Police Station, Ahmedabad on 15.09.2003 against the applicants and other accused persons, Directors, Office bearers, Administrators who were in administration and management of one Shreeji Dychem Limited for the offences punishable under Sections 403, 406, 415, 148, 420, 424 and 114 of the IPC. It is alleged in the FIR that in the year 1995, the Company – Shreeji Dychem Limited announced one public issue and thereby collected from innocent and small investors an amount of Rs.534 lacs through public issue vide prospectus dated 21.08.1995 by making false commitments in the said prospectus on 21.08.1995 and thereafter have misused the funds so collected. It is further submitted that thereafter after collecting the aforesaid huge amount of Rs.534 lacs, the Company has not started at all and the Company has misappropriated the amount and thereby Directors, Promoters of the Company have committed the offences as alleged. It is further alleged in the complaint that after collecting the aforesaid huge amount, the Directors and the promoters and the persons who have signed the prospectus have went underground and were not available. That they have not submitted the returns / annual returns to the SEBI and ROCs and on inquiry being made the Company as well as Directors and promoters are not traceable. Therefore, it is alleged that the Chairman and Managing Director of

the Company Shri Amrut Patel and other persons who were the Directors/promoters of the Company and who signed the prospectus have committed the offences. That thereafter the police has made a report for addition of offence under Section 409 of the IPC to the learned Magistrate / concerned Court. That thereafter before any further investigation could be made by the concerned IO, the applicants – original accused (some of the accused) have preferred the Criminal Miscellaneous Application under Section 482 of the CrPC, quashing and setting the impugned FIR in exercise of powers under Section 482 of the CrPC.

[3.0] At the outset it is required to be noted that some other co-accused persons have also approached this Court to quash and set aside the impugned FIR, more particularly, being Special Criminal Application No.1031 of 2004 and others which have been withdrawn by the concerned other accused and therefore, the present applicant is required to be considered qua the present applicants only.

[3.1] Shri Ashok M. Parekh, learned advocate appearing on behalf of the applicants has vehemently submitted that as such the applicants have not committed any offence as alleged for the offences punishable under Sections 403, 406, 415, 148, 420, 424 and 114 of the IPC. It is submitted that as such the applicants were only technical Directors for expansion of the plant of the Company and they were not in day today affairs and management of the Company and therefore, they cannot be held liable and/or responsible for the act of the Company as well as other

Directors/promoters. It is submitted that at the relevant time, the applicant signed the prospectus as promoters, as technical Directors only. It is submitted that even the contention of behalf of the original complainant that after 1995 the Company was not in existence at all is not true. It is submitted that even the Company has subsequently submitted the annual returns upto March 2011 which establishes that the Company was in existence. It is submitted that even subsequently the lapse in filing the returns has been condoned by accepting the fine. Therefore, it is requested to quash and set aside the impugned FIR in exercise of powers under Section 482 of the CrPC by submitting that to continue the criminal proceedings against the applicants would be nothing but abuse of process of law and the Court.

[4.0] Present application is opposed by Shri N.D. Gohil, learned Central Government Standing Counsel appearing on behalf of the original complainant. It is submitted that as such the investigation is yet to be carried out by the IO and whether the applicants were only technical Directors as alleged and/or whether the Company was in existence or not and/or whether the Company has worked after collecting huge amount of Rs.534 lacs from small investors are all questions which are required to be investigated by the IO. It is submitted that admittedly the applicants have signed the prospectus issued while announcing the public issue and inviting small and innocent investors who invested huge amount of Rs.534 lacs. It is submitted that after collecting huge amount of Rs.534 lacs through public issue of Shreeji Dyechem, for number of years the Company was not in existence at all and the Company, its

Directors, promoters all misappropriated the amount which was collected from the small and innocent investors, therefore, it is requested not to exercise extraordinary jurisdiction under Section 482 of the CrPC and not to quash and set aside the impugned FIR at this stage without permitting the IO to further investigate into the allegations made in the FIR.

[5.0] Heard learned advocates appearing on behalf of respective parties at length. At the outset it is required to be noted that the impugned FIR has been lodged by ROC, Gujarat against Shreeji Dyechem Limited, its Directors, promoters etc. alleging *inter-alia* that after the public issue in the year 1995 and collected huge amount of Rs.534 lacs from small and innocent investors, the Company has not started its business and the Company, its Directors, promoters etc. have misappropriated the aforesaid huge amount of Rs.534 lacs. It is also further alleged that for number of years the Directors and the promoters disappeared and the Company has not come into existence at all and/or non-functional at all. There are specific averments and allegations in the FIR making out a cognizable offence which are further required to be investigated by the IO. It is an admitted position that applicants also signed the prospectus dated 21.08.1995 through which the huge amount of Rs.534 lacs has been gathered and/or collected from the small and innocent investors. The contention on behalf of the applicants that the applicants acted only as technical Directors and were there for expansion of the plant only and/or the contention that subsequently the Company was established, are all questions which are required to be considered by the IO during the

investigation. It is to be noted that present is an application under Section 482 of the CrPC and unless it is found that on bare reading of the FIR no case for cognizable offence has been made out and/or it does not disclose any cognizable offence, the Court is not required to quash and set aside the impugned FIR in exercise of powers under Section 482 of the CrPC.

[5.1] Looking to the allegations in the FIR which are yet to be investigated by the concerned IO, it appears to the Court that this is not a fit case to exercise powers under Section 482 of the CrPC and to quash and set aside the impugned FIR at the threshold and without permitting the IO to investigate the allegations in the FIR, in exercise of powers under Section 482 of the CrPC.

[6.0] In view of the above and for the reasons stated above, present Criminal Miscellaneous Application fails and the same deserves to be dismissed and is, accordingly, dismissed. Rule is discharged. Ad-interim relief granted earlier, if any, stands vacated forthwith.

(M.R. Shah, J.)

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