2025:BHC-AS:12217

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.6289 of 2019

1. Rajesh Shantilal Adani
Age: 55 years, Indian Inhabitant
Having address at Adani House,
Near Mithakhali Circle,
Navrangpura, Ahmedabad 389009.

2. Gautam Shantilal Adani
Age: 57 years, Indian Inhabitant
Having address at Adani House,
Near Mithakhali Circle,
Navrangpura, Ahmedabad – 389009. … Petitioners

versus

1. State of Maharashtra

2. Union of India
Through Senior Assistant Director,
Serious Fraud Investigation Office
Ministry of Corporate Affairs
Having office at 6^{th} Floor,
Everest Building, 100, Marine Drive,
NS Marg, Mumbai. … Respondents

Along with
Criminal Writ Petition No.6290 of 2019

Adani Enterprises Limited
Formerly known as
Adani Exports Limited

Having address at Adani House,
Near Mithakhali Circle, Navrangpura,
Ahmedabad – 389009
(through Rahul K Pandya,
Authorised signatory) … Petitioner

versus

1. State of Maharashtra

2. Union of India
Through Senior Assistant Director,
Serious Fraud Investigation Office
Ministry of Corporate Affairs
Having office at 6th floor, Everest
Building, 100, Marine Drive,
NS Marg, Mumbai. … Respondents

Mr Amit Desai, Senior Advocate, along with Mr Vikram Nankani, Senior Advocate, Mr Ishwar Nankani, Mr Prithwiraj Choudhari, Mr Gopalkrishna Shenoy, Ms Rhea Sinkar and Ms Prajakta Sarwadekar, i/by M/s Nankani and Associates, for the petitioners.

Ms Manisha Tidke, APP, for respondent No.1/ State.

Mr Anil Singh, ASG, along with Mr DP Singh, Mr Adarsh Vyas, Mr Pradeep Yadav, Ms Divya Gontia and Ms Ruchita Verma, for respondent No.2/ UOI.

Coram: R.N. Laddha, J.
Reserved on: 12 March 2025
Pronounced on: 17 March 2025

Order:

By these petitions, the petitioners (accused Nos.8, 9, and 10) seek to challenge the orders dated 1 November 2019 passed by the Additional Sessions Judge, Mumbai, in Criminal Revision Applications No.248 of 2017 and 1496 of 2015, whereby the orders dated 9 May 2014 and 7 October 2015 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.10/SW/2012, discharging the petitioners for the offences punishable under Sections 420 read with 120B of the Indian Penal Code ('IPC') were set aside and the trial Court was directed to follow the procedure contemplated under Sections 244 and 245 of the Code of Criminal Procedure, 1973 (CrPC).

2. Based on the authorisation granted by the Central Government under Section 621(1) of the Companies Act, 1956 ('1956 Act'), as per the Notification dated 4 December 2008 issued by the Ministry of Corporate Affairs read with the office order dated 16 January 2012, a complaint was filed on 26 April 2012 by the Union of India through the Senior Assistant Director (Investigation) of the Serious Fraud Investigation Office ('SFIO') in the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai. The complaint was filed against Triumph Securities Limited and ten other

accused for offences punishable under Sections 420 read with 120B of the IPC, concerning cheating and criminal conspiracy. It is alleged that these accused, in collusion with the promoters of accused No.8 and others, engaged in fraudulent activities to deceive the genuine investors. The core allegations in the complaint are that accused No.8 to 10 directly or indirectly funded certain entities controlled by accused No.2, referred to as KP entities in the complaint. Of these entities, only accused No.1 has been arraigned as an accused in the complaint. The financial assistance rendered by the petitioners was used with the dishonest intention of purchasing the shares of accused No.8 and manipulating the capital market, thereby enabling the promoters of accused No.8 to offload their shareholdings when the share price was high and reacquire them when the prices dropped, thus profiting from these unlawful trades. By doing so, the accused misled the public into believing that the scrip's price movement was normal and profited therefrom. The specific details of these allegations are outlined in paragraphs 25 and 26 of the complaint, which reads thus:

> *"25. That the presiding facts clearly indicated that Shri Ketan Parekh entered into criminal conspiracy with Adani Exports Limited/ Adani Properties Private Limited and its group/ associates and subsidiaries to artificially and unlawfully manipulate share price of accused No.8 (Adani Exports Limited) with dishonest*

> *intention of causing unlawful gain to the promoters of Adani and himself/ his group companies and causing resultant unlawful loss to the public during the period of the scam.*
>
> *26. That promoters of Adani Entities made unlawful gains by providing funds and shares to KP Entities for artificially manipulating shares of the company and offloading their shareholding when the share price was ruling height. They were also aware of the manipulation and price movement of the shares at each stage as they were controlled with their own finances and shares by KP Entities through his group companies. The public was deceived to believe that the price movement of the scrip was normal and was induced to acquire the shares offloaded in the market by the promoters of the company as its peak price. The KP Entities made unlawful gain of about Rs.151.40 Crores from transactions in the Adani scrip and the promoters of Adani Group made unlawful gain of about Rs.388.11 Crores. The members of the public and other persons suffered huge losses amounting to approximately Rs.151.40 Crores plus Rs.388.11 Crores on account of the aforesaid unlawful activities of the conspirators accused Nos. 1 to 11 mentioned above."*

3. The petitioners in Writ Petition No.6289 of 2019 are arraigned as accused Nos.10 and 9, respectively, and the petitioner in Writ Petition No.6290 of 2019, previously known

as Adani Exports Limited, is arraigned as accused No.8.

4. On 7 March 2014, the petitioners filed applications seeking discharge under Section 245 CrPC. After reviewing the applications, the trial Court ruled in favour of the petitioners and granted their discharge from the case. However, in response to this decision, respondent No.2, SFIO, challenged the discharge by filing criminal revision applications under Section 397 CrPC. Upon perusing the case, the learned Additional Sessions Judge set aside the discharge orders passed by the trial Court. In doing so, the learned Judge directed the trial Court to reconsider and re-evaluate the discharge applications. As a result, the petitioners' request for discharge was not upheld, and the trial Court was required to conduct a fresh determination of their applications. Aggrieved thereby, the petitioners have filed the present writ petitions.

5. Mr Amit Desai, the learned Senior Counsel appearing on behalf of the petitioners, submitted that the SFIO does not have the legal authority or jurisdiction to file a complaint for offences under the IPC and drew this Court's attention to an office order dated 16 January 2012 issued by the Government of India, which directed an investigation into the operations of Manmandir Estate Developers Private Limited, Nakshatara Software Private Limited, Chitrakoot Computers Private

Limited, Triumph Securities Limited, Amadhi Investments Limited, Zenet Software Limited, Welvet Financial Advisors Limited, and Sugandh Estate and Investment Private Limited, and not the petitioners. According to Mr Desai, an investigation into a company's affairs under Section 235 of the 1956 Act fundamentally differs from a prosecution under Sections 242 read with 621 of the 1956 Act. A prosecution stemming from an investigation report under Section 237 of the 1956 Act can only be initiated for the offences under the 1956 Act and not for violations of any other statute, including the IPC. The learned Senior Counsel further submitted that Section 242 must be read with Section 621 of the 1956 Act, which clearly states that the Special Court is only empowered to take cognisance of offences under the 1956 Act and not any other law in force. The phrase "any offence for which he is criminally liable" appearing in Section 242 of the 1956 Act is subject to the powers of the Special Court to take cognisance of the offences only under the 1956 Act. Section 242 of the 1956 Act cannot be read in isolation, as doing so would grant the SFIO broader powers than those intended by the legislature.

6. Mr Desai contended that as per Section 4 of the CrPC, offences under the IPC must be investigated and prosecuted by a police officer. In contrast, the offences under special statutes

are to be investigated and prosecuted with the provisions specified in those statutes. The learned Senior Counsel submitted that the Companies Act, 2013 ('2013 Act'), grants the SFIO the authority to initiate prosecutions for offences committed under the 2013 Act as well as other relevant statutes. This enabling provision was absent in the 1956 Act; thus, when the SFIO identified any infractions of additional laws during its investigations, it was mandated to forward its findings to the concerned agency for prosecution or appropriate action in terms of the Government Resolution bearing No.5/02/2003-SFIO dated 21 August 2003. The learned Senior Counsel, referring to the complaint, argued that the SFIO's investigation did not reveal any violations of the 1956 Act but allegedly identified possible deception concerning the issuance and transfer of securities. Instead of forwarding the report to the police as required under Section 4 of the CrPC or to the Securities and Exchange Board of India ('SEBI'), the SFIO, in contravention of the proviso to Section 621(1) of the 1956 Act, initiated the prosecution against the petitioners.

7. The learned Senior Counsel also submitted that under Section 621 of the 1956 Act, a Court is permitted to take cognisance only of offences under that Act, provided the complaint is in writing and filed by either the Registrar of

Companies, a shareholder, or a person authorised by the Central Government. Since the present complaint, filed by the person of the Central Government, does not allege any violation under the 1956 Act, the Court had no jurisdiction to entertain offences under the IPC based on such a complaint.

8. Furthermore, the learned Senior Counsel asserted that no grievances have been raised by any members of the public. The complaint filed by the concerned officer, in an official capacity, is based on the authorisation granted by the Central Government through a Notification dated 4 December 2008 under Section 621(1) of the 1956 Act along with an office order dated 16 December 2008. The learned Senior Counsel also pointed out that the concerned officer was empowered under Section 237 of the 1956 Act to investigate only accused No.1, and the allegations in the complaint pertain to the alleged manipulation of the shares by the petitioners, which is in no way connected to the affairs of accused No.1. Since the authorisation allows investigation and prosecution of other entities, Mr Desai contended that the petitioners' prosecution is misplaced and exceeds the boundaries of the permitted acts as it does not enlist them.

9. In support of the aforesaid submissions, Mr Desai cited the decisions in *(i) Ashim Maitra v. State of W.B., 2007 SCC*

OnLine Cal 190, (ii) Hussein Ghadially v. State of Gujarat, (2014) 8 SCC 425, (iii) State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770, and (iv) Priya Paul v. State of Maharashtra, Criminal Writ Petition No.3808 of 2021 dated 13 October 2022 (Bombay).

10. Mr Desai further submitted that the trial Court had discharged the petitioners after reviewing the complaint and concluding that no *prima facie* offence was made out against the petitioners. Notably, while setting aside the discharge order, the revisional Court did not find this conclusion to be incorrect. The revisional Court was not empowered to go beyond the record of the trial Court. By directing the trial Court to provide the complainant with an opportunity to lead further evidence, the revisional Court exceeded its jurisdiction. In the impugned orders, the learned Additional Sessions Judge acknowledged the legal principle that a revisional Court could not examine material beyond what was available before the trial Court. Despite this acknowledgement, the learned Additional Sessions Judge erroneously relied on the investigation report in the impugned orders even though this report was neither a part of the trial Court's record nor introduced before the Sessions Court. The revisional Court incorrectly proceeded on the assumption that the investigation report formed the foundation

of the complaint. Since the investigation report was not a part of the case record, this assumption was legally flawed. The learned Additional Sessions Judge concluded that the complainant (SFIO) had made a glaring mistake by failing to produce the investigation report or its copy as a part of the case record. However, since neither the trial Court nor the revisional Court sought this report, it was impermissible for the Sessions Court to invoke its revisional powers to rectify such an assumed omission or inadvertence. While the learned Sessions Court acknowledged the principles laid down in *Ajoy Kumar Ghose Vs. State of Jharkhand, (2009) 14 SCC 115*, it failed to recognise the distinction between Sub-Sections (1) and (2) of Section 245 CrPC. According to Mr Desai, the Sessions Court exceeded its authority under Section 397 of CrPC by relying on the investigation report, which was not included in the official record.

11. The learned Senior Counsel submitted that the Sessions Court itself found that no member of the public had filed any complaint against the petitioners alleging that they had committed cheating or that the public had suffered financial losses due to their actions. Given this absence of public grievances, the allegation of cheating is baseless.

12. Mr Desai further argued that the allegations in the

complaint pertain to transactions involved in the purchase and sale of shares in a listed company and claims of price manipulation. However, matters related to stock market transactions and price manipulation fall exclusively under the regulatory purview of the SEBI. Therefore, it was beyond the SFIO's jurisdiction to investigate such matters or file a complaint. The complaint refers to various KP entities that allegedly received financial assistance from the promoters of Adani entities. However, the entities that allegedly received the funds were not arraigned as accused in the complaint, which raises concerns about selective prosecution. The regular commercial transactions were wrongfully portrayed as a part of a criminal conspiracy under Section 120B of the IPC despite the absence of any clear criminal intent.

13. Mr Vikram Nankani, the learned Senior Counsel, endorsed and adopted the arguments put forth by Mr Desai. He further contended that the impugned order was inherently contradictory. On the one hand, the learned Additional Sessions Judge, relying on the decision in *Ajoy Kumar Ghose (supra),* held that the discharge application was maintainable, whereas, on the other hand, the learned Judge simultaneously directed the trial Court to proceed in accordance with the procedure outlined under Sections 244 and 245 of the CrPC, thereby

creating an inconsistency in the order.

14. The learned Senior Counsel further submitted that there were no specific allegations demonstrating that the accused had deceived or dishonestly induced any individual to part with any property. Expanding this point, he submitted that a charge of cheating can only be sustained if it is shown that one party engaged in deception or acted fraudulently or dishonestly to induce the other party to transfer shares or money. This, he argued, must result in wrongful gain to one party and a corresponding wrongful loss to the other. In the absence of such elements, no case of cheating is made out.

15. Furthermore, Mr Nankani carried out a comparative analysis of Section 212 of the 2013 Act and the provisions of the 1956 Act. By this analysis, the learned Senior Counsel sought to demonstrate that, unlike the 2013 Act, the 1956 Act lacked a provision empowering the SFIO to file complaints for offences under the IPC. Consequently, the learned Senior Counsel contended that within the legal framework of the 1956 Act, the SFIO did not possess the jurisdiction to initiate proceedings pertaining to the offences under the IPC.

16. The learned Senior Counsel further submitted that the sole accusation against accused No.8 is that it extended the cut-

off date for the allotment of bonus shares from 1 November 1999 to 29 November 1999. This extension allegedly enabled the KP entities to acquire shares from the open market during this extended period, thereby becoming eligible for the bonus issue. The determination of the record date for the allotment of bonus shares was duly approved by accused No.8's board of directors and the general body of shareholders during the meetings held on 30 July 1999 and 6 September 1999, respectively. The subsequent change to the cut-off date was made in strict compliance with the provisions of the 1956 Act and the applicable rules framed thereunder. The extension of the cut-off date was neither arbitrary nor illegal but was carried out in accordance with the legal and regulatory provisions. According to the learned Senior Counsel, the extension of the cut-off date benefited a significant number of shareholders and was not intended to favour any specific individual or entity, and there was no impropriety or illegality in the decision to extend the cut-off date for the allotment of bonus shares.

17. Furthermore, Mr Nankani argued that the accusation of criminal conspiracy under Section 120B of the IPC is founded on mere conjunctures, surmises, and suspicion. It is not the case of the prosecution that the petitioners entered into any agreement with any individual to perpetrate the alleged

offence. According to the learned Senior Counsel, the learned trial Court thoroughly examined the material placed before it and rightly decided to discharge the petitioners.

18. The learned Senior Counsel submitted that accused No.8, a company, cannot trade its shares on the stock exchange; thus, the allegations of manipulation of the shares by accused No.8 is without substance and devoid of merits. Further, accused Nos.9 and 10 can not be tried vicariously in their capacity of chairman and managing director of accused No.8 for the offences punishable under the IPC.

19. In support of his contention, the learned Senior Counsel relies on *(i) Mariam Fasihuddin v. State, 2024 SCC OnLine SC 58, (ii) Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609, (iii) Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668, (iv) SK Alagh v. State of UP, (2008) 5 SCC 662, (v) Shiv Kumar Jatia v. State of NCT of Delhi, (2019) 17 SCC 193, and (vi) Varinder Singh v. State of Punjab, 2018 SCC OnLine P&H 5474.*

20. On the other hand, Mr Anil Singh, the learned Additional Solicitor General appearing on behalf of respondent No.2, opposing the petitioner's request, contended that the Central Government issued an order on 20 October 2004 under Section 237(b) of the 1956 Act, which mandated the SFIO to

investigate the affairs of accused No.1. The findings of the SFIO's investigation indicated violation of the 1956 Act as well as the IPC by the accused, including the petitioners. This investigation report was forwarded to the Ministry of Corporate Affairs for further deliberation. Following a thorough examination of the report, the Ministry of Corporate Affairs authorised the initiation of prosecutions against the accused for the violations of the 1956 Act and the IPC. On 24 July 2013, the learned Magistrate took cognisance of the offences against the petitioners and issued a process after examining the records and applying his mind. The petitioners entered appearance and filed discharge applications, which were erroneously allowed by the trial Court. In revision, the Sessions Court rightly found that the investigation report was the foundation of the case, and the trial Court ought to have examined it before deciding the discharge applications.

21. According to Mr Singh, sufficient grounds exist to prosecute the petitioners for the offences punishable under Sections 420 read with 120B of the IPC. Respondent No.2 elaborately explained the nexus of the transactions between the Adani group of companies and the KP entities and the commission of the offences in the complaint. The petitioners conspired with the co-accused and manipulated the stock

market by divesting their shareholdings at inflated prices and acquiring the shares when the prices declined. As a result, the petitioners unlawfully gained a huge amount, causing financial loss to the general public and other stakeholders. The IPC serves as a general penal law enabling any individual to initiate criminal proceedings, including the SFIO, as the same is not prohibited under any law, and it is not mandatory for a complaint to be filed by any member of the public, and in cases involving the offence of cheating, the SEBI is not the sole authority competent to act.

22. The learned Senior Counsel submitted that since the investigation report was referenced in the complaint, the trial Court should have directed the complainant to produce the report before deciding to discharge the petitioners. Therefore, the Sessions Court did not err in remanding the case to the trial Court for consideration of the investigation report. Mr Singh further placed reliance on Sections 235 to 237 of the 1956 Act to demonstrate that the SFIO was vested with the authority to investigate the affairs of a company. He also asserted that the investigation report is admissible as evidence under the provisions of Section 246 of the 1956 Act.

23. In support of his contentions, the learned Senior Counsel relied on *(i) Chandra Deo Singh v. Prokash Chandra Bose,*

1963 SCC OnLine SC 4, (ii) Chintalapati Srinivasa Raju v. SEBI, (2018) 7 SCC 443, (iii) Esher Singh v. State of A.P., (2004) 11 SCC 585, (iv) Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609, (v) Ram Narayan Popli v. CBI, (2003) 3 SCC 641, (vi) Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530, (vii) Raja Narayanlal Bansilal v. Maneck Phiroz Mistry, 1960 SCC OnLine SC 160, (viii) A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500, and (ix) S. Satyanarayana v. Energo Masch Power Engg. & Consulting (P) Ltd., (2015) 13 SCC 1.

24. This Court has given anxious consideration to the rival submissions made across the Bar and perused the records.

25. Before delving into the merits of the case, it is essential to examine the scope and extent of the powers of the trial Court for discharge under Section 245(2) of the CrPC and the Sessions Court while exercising revisional jurisdiction under Section 397 of the CrPC.

26. In the case of *Ajoy Kumar Ghose (supra)*, the Hon'ble Supreme Court, in paragraphs 23, 24, 25, 30 and 31, while dealing with Sections 244 and 245 of the CrPC, observed as follows:

> *"23. Essentially, the applicable sections are*

Sections 244 and 245 CrPC since this is a warrant trial instituted otherwise than on police report. There had to be an opportunity for the prosecution to lead evidence under Section 244(1) CrPC or to summon its witnesses under Section 244(2) CrPC. This did not happen and instead, the accused proceeded to file an application under Section 245(2) CrPC on the ground that the charge was groundless.

24. Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC.

25. The situation under Section 245(2) CrPC is, however, different. There, under sub-section (2), the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of *the case", clearly bring out this position.*

******

30. Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) CrPC, where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) CrPC, and if he comes to the conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him.

31. The situation under Section 245(2) CrPC, however, is different, as has already been pointed out earlier. The Magistrate thereunder has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 CrPC and till the completion of the evidence of prosecution under Section 244 CrPC. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 CrPC, and makes an application for discharge."

27. Accordingly, the trial Court was under no obligation to direct the complainant to present evidence prior to addressing

the discharge application under Section 245(2) of the CrPC. The complainant consciously chose not to present any evidence under Section 244 CrPC before the discharge applications were taken up for consideration and adjudication. While there was no legal bar preventing the complainant from requesting permission from the trial Court to lead evidence under Section 244 CrPC, the complainant opted not to exercise this right. As a result, the trial Court cannot be faulted for deciding the discharge applications solely based on the allegations outlined in the complaint, particularly since the investigation records did not form a part of the proceedings before it.

28. The learned Additional Sessions Judge acknowledged the applicability and significance of the legal principles established in *Ajoy Kumar Ghose (supra).* The learned Judge further concurred that the revisional Court cannot go beyond the record of the trial Court. Even as per the revisional Court's orders, its jurisdiction is confined strictly to the record of the trial Court and cannot extend beyond it. This position is firmly rooted in the statutory limits imposed by Section 397 of CrPC, which authorises the revisional Court solely to summon and review the trial Court's record to ascertain the correctness, legality, or propriety of its findings or decisions. Despite this understanding of the legal framework, the learned Additional

Sessions Judge erred by independently presuming that the investigation report formed the core basis of the case. Additionally, the learned Judge considered the complainant's failure to place the investigation report on record as an error. These interferences and conclusions exceeded the revisional Court's jurisdiction under Section 397 of the CrPC, and therefore, the impugned orders cannot be sustained.

29. Upon a careful evaluation of the submissions and the records, it becomes evident that the complaint fails to satisfy the essential ingredients of the offence of cheating under Section 420 of the IPC. The learned Additional Sessions Judge has also categorically acknowledged that the complaint lacks any assertion from any member of the public alleging that they were deceived or induced, whether fraudulently or dishonestly, to part with their money or the shares as a result of alleged price manipulation. A fundamental requirement for an offence under Section 420 IPC is the presence of an element of deception, which leads to the victim suffering from loss while the accused gains wrongfully. However, in the present case, there is a conspicuous absence of any such allegations from an affected party. Merely by asserting that the accused has made a wrong gain without demonstrating the corresponding wrongful loss or deception suffered by a specific victim does not suffice

to attract the offence of cheating under the IPC. This contention finds support in the Hon'ble Supreme Court's decision in *Mariam Fashiuddin (supra)*, which reinforces the principle that a charge under Section 420 IPC cannot be sustained in the absence of clear evidence of deception and resultant inducement. Given that the foundational charge of cheating is not made out, the ancillary charge of criminal conspiracy under Section 120B IPC, which pre-supposes the existence of a substantive offence, also becomes unsustainable.

30. Significantly, the learned Additional Sessions Judge has not found or identified any errors, irregularities or legal improprieties in the findings of the trial Court as recorded in paragraphs No.6 to 8 of the discharge order dated 9 May 2014 or in the findings of the discharge order dated 7 October 2015. These findings remained undisturbed and have not been deemed to contravene any established legal principles. It is a well-settled principle of law that the scope of the revisional Court's powers under Section 397 of the CrPC is limited to examining the correctness, legality or propriety of the trial Court's order. In the absence of any substantive findings, error, or legal infirmity in the discharge orders, the interference by the revisional Court was unwarranted and beyond its jurisdictional mandate.

31. Mr Desai primarily relied on the Resolution bearing No.45011/16/2003-Admn. dated 2 July 2003, issued by the Ministry of Finance, Department of Company Affairs, Government of India, to contend that the SFIO functions as an integral component of the Department of Corporate Affairs. He submitted that the SFIO was constituted with the objective of investigating corporate frauds and operates within the framework of the then prevailing legal provisions, specifically conducting inquiries under Sections 235 to 247 of the now repealed 1956 Act. To reinforce his argument, Mr Desai referred to the Notification dated 4 December 2008, by which the Central Government conferred powers upon the SFIO's officer to initiate and prosecute cases under Section 621 of the 1956 Act. Additionally, the learned Senior Counsel highlighted the SFIO's mandate as articulated in the letter dated 21 August 2003 issued by the Ministry of Finance, Department of Company Affairs, to the Director of the SFIO. A pivotal element of Mr Desai's argument is his interpretation of Section 621 of the 1956 Act. Emphasising on the specific wordings of this provision, he contended that the complaint filed by the SFIO in the present case exceeds its jurisdiction. According to the learned Senior Counsel, Section 621 is explicitly limited to prosecuting offences under the 1956 Act and does not extend

to the offences under the IPC. Therefore, according to Mr Desai, as the present complaint relates exclusively to IPC offences and does not involve any violations of the 1956 Act, the proceedings initiated by the SFIO lack the requisite legal authority and are consequently untenable.

32. The issue raised by Mr Desai is undoubtedly fundamental in nature and goes to the root of the matter. However, it is pertinent to highlight that this issue was not originally presented before the Sessions Court. Instead, it was introduced for the first time as a pure question of law before this Court by an amendment to these writ petitions, which was permitted by an order dated 31 January 2024. On the other hand, Mr Singh rightly emphasised the general principle that criminal law can be invoked by any individual. However, in the context of the present case, the proceedings were initiated by way of a written complaint submitted to the Magistrate's Court by an authorised government officer under Section 621 of 1956 Act. In view of these specific circumstances, the general proposition advocated by Mr Singh regarding the initiation of criminal proceedings may not be entirely applicable. That being said, while Mr Desai's contention regarding the competence of the SFIO to file a complaint under Section 621 of the 1956 Act for offences under the IPC, prior to the enactment of Section 212 of the

2013 Act, carries substantial merit, it is not necessary to adjudicate upon this issue in the present case. This conclusion arises from the determined that the trial Court rightly exercised its powers under Section 245(2) of the CrPC, whereas the Sessions Court exceeded its jurisdictional limits under Section 397 of the CrPC.

33. In light of the above, the impugned orders dated 1 November 2019 passed by the Additional Sessions Judge, Mumbai, in Criminal Revision Applications No.248 of 2017 and 1496 of 2015 are hereby set aside, and the discharge orders passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, on 9 May 2014 (under Exhibits 12 and 13) and 7 October 2015 (under Exhibit 11) are reinstated.

34. The writ petitions stand disposed of accordingly.

(R.N. Laddha, J.)

35. After the pronouncement of the order, a request is made to suspend the operation of this Order for a period of two weeks to assail it before the Hon'ble Supreme Court. Given the above, the request is rejected.

(R.N. Laddha, J.)