IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 15664 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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GAURANG SHETHWALA S/O MULCHANDAS SHETHWALA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR.NANDISH H THACKAR(7008) for the Applicant(s) No. 1
MR CHAITANYA S JOSHI(5927) for the Respondent(s) No. 2
ROHAN N SHAH APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 23/10/2026

ORAL JUDGMENT

1. The petitioner before this court invoking Section 482 of Criminal Procedure Code,1973 to quash Criminal Case No. 136 of 2002 pending before the court of learned Additional Chief Judicial Magistrate, Ahmedabad.

2. Facts in a nutshell giving rise to the present petition can be narrated as follows:-

2.1 The petitioner is a Chartered Accountant and is thus, a member of Institute of Chartered Accountants of India and has been granted certificate to practice by the same institute on 01.04.1989 and ever since then, the petitioner is practicing as a

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chartered accountant.

2.2 The petitioner came to be appointed as a professional non-executive director with effect from 06.07.1995 in NISU Fincap Limited, a company having its registered office at 301, Samudra Complex, C.G. Road, Sardar Patel Nagar, Ellisbridge, Ahmedabad, which was formally known as “Mega Finance and Securities Limited”, and it is around the same time that the company came up with a public issue of equity shares.

2.3 The petitioner resigned as a director from the company with effect from 01.04.1997, which would be evident from the Form No. 32 available with the Registrar of Companies reflecting the date of resignation as 01.04.1997.

2.4 It is the case of the prosecution that the Registrar of Companies, respondent No. 2 herein, lodged a criminal case bearing No. 136 of 2002 before the court of Additional Chief Metropolitan Magistrate, arraigning the present accused as accused No.6, alleging to have committed default under Sections 63, 68 and 628 of the Companies Act, 1956, inter alia contending that all the accused, including the present petitioner, were the managing/whole-time/director of the company during the relevant period and signatory to the prospectus to which the complaint relates and are thus liable for default/violation of the Companies Act.

2.5 It is further the case of the prosecution that the signatories of the prospectus being directors of the company have failed to implement the project for which the public issue was made

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and/or forecast made by the signatories to the prospectus.

2.6 It is also the case of the prosecution that a show cause notice was issued on 29th of May 2022. However, there being no satisfactory reply, and all the accused having contravened and committed default under Sections 63, 68 and 628 of the Companies Act, inasmuch as, immediately after the public issue, there were numerous complaints against the company from public or the investors about non-availability of the company and/ or not achieving the targets as stated/promised in the prospectus.

2.7 That on the basis of investors' complaint, 229 companies in the country were shortlisted as vanishing companies by the SEBI, which are also available on the website of Department of Company Affairs also.

2.8 It is also the case of the prosecution that the present company, namely NISU Fincap Limited, is in the list of those vanishing companies and that the Government of India, Department of Company Affairs, contemplated to ensure that all such companies which collected huge funds through public issue, but utilized the proceeds of the issue for the purpose other than those for which the issue was brought, are required to be punished in the public interest for their misdeeds and offense committed under the Companies Act, and thus, the accused having committed offense as stated hereinabove, lodged the private complaint in terms of the provisions of Section 220 of the Criminal Procedure Code, 1973.

3. Learned advocate for the petitioner, Mr. Nandish Thackar,

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would submit that during the short tenure in the company as a director, the petitioner never participated in the day-to-day affairs of the company, nor did he attend any board meetings or general meeting of the company, nor did he receive any sitting fees from the company, nor any remuneration either direct or indirect, and was also not a shareholder or subscriber to its memorandum of association, but in fact, being a Chartered Accountant, was only saddled with the responsibility of compliance with regard to issuance of the IPO.

3.1 Learned advocate further submitted that upon receiving show cause notice, the petitioner submitted a detailed reply also, inter alia, contending that he had already resigned way back in 1947 more particularly, on 01.04.1997. However, to the utter surprise and shock of the petitioner, despite of submitting the aforesaid stated reply to the show cause notice, received its process pursuant to criminal case No. 136 of 2002 for the alleged offenses under the Companies Act.

3.2 Learned advocate for the petitioner would further submit that impugned FIR came to be registered as C.R. No. I-861 of 2003 before the Navrangpura Police Station for offense punishable under Sections 403, 406, 415, 418, 420 and 424 of the IPC, which came to be challenged by way of Criminal Miscellaneous Application No. 1032 of 2007, and by order dated 18.12.2012, this Court was pleased to quash and set aside the above referred FIR by clear-cut finding that the essential allegations are not made out by the complainant for the year 1999 and the petitioner had resigned from the post of director way back in 1997, and thus had committed no offense as alleged.

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3.3 Learned advocate further submitted that despite of the FIR having been quashed, wherein the allegations were with regards to the year 1999 onwards, the present complaint is lodged without there being any justifiable reason to file criminal case, inasmuch as he had resigned way back in 1997, more particularly 01.04.1997, and has thus, wrongly implicated the present petitioner, which is nothing but abuse of process of law.

4. Per contra, learned advocate Mr. Chaitanya S. Joshi for the Original Complainant(Registrar of Companies), would submit that when the petitioner herein was also a signatory to the prospectus and was also director in the said company, though he had resigned in the year 1997, makes no difference, and there are allegations against the company as well as the directors for violation of Section 63, 68 and 628 of the Companies Act.

5. Section 63 relates to Criminal liability for mis-statements in prospectus, Section 68 relates to Penalty for fraudulently inducing persons to invest money and Section 628 relates to Penalty for false statements and when various complaints were received against the company from the public or the investors about the non-availability of the company and/or not achieving the targets as stated/promised in the prospectus, to which the present petitioner was also a signatory, on basis of such investors' complaint, the present company was also shortlisted as vanishing companies by the SEBI. Hence, it cannot be said that there is no prima facie case against the present petitioner, and has thus argued to dismiss the present petition.

6. Heard learned advocates for the respective parties. This

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Court has gone through the averments made in Criminal Case No. 136 of 2002, pursuant to which process came to be issued against the present petitioner.

6.1 At Annexure B, Page 25, Form No. 32 is placed on record, which clearly reflects that the petitioner resigned as a director from 'Megh Finance and Securities Limited' on the 1st of April, 1997.

6.2 It is also a matter of record that the petitioner was merely a professional director being a Chartered Accountant, acting solely as a non-executive director. The relevant provisions of Section 63 provide as follows:

> *"63. Criminal liability for mis-statements in prospectus.—(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.*
> *(2) A person shall not be deemed for the purposes of this section to have authorised*

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the issue of a prospectus by reason only of his having given—
(a) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or
(b) the consent required by sub-section (3) of section 60."

6.3 If sub clause (a) of clause (2) of Section 63 is taken into consideration, the consent required by Section 58 for the inclusion of a statement purporting to be made by an expert shall not be deemed for the purpose of Section 63 to have authorized the issue of the prospectus. Section 58 provides for an expert's consent to issue a prospectus containing a statement made by him. Thus, giving consent as an expert under Section 58 is not to be treated as authorizing the issue of the prospectus, and cannot attract criminal liability under Section 63 of the Companies Act merely by reason of having given such consent. Even the factum of reply to the show cause notice issued to the present petitioner is not controverted by the complainant where also similar stand is taken by the petitioner.

6.4 As far as Section 68 of the Companies Act is concerned, it provides a penalty for fraudulently inducing persons to invest money. In view of the operation of sub-section (2) of Section 63, Section 68 would not be applicable merely because the director, being a Chartered Accountant, had given consent as required under Section 58 and as such there is no averment in the entire complaint against the present petitioner to the effect that he had induced persons to invest money in the company.

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6.5 As far as Section 628 of the Companies Act is concerned, it relates to the penalty for false statements in any return, report, certificate, balance sheet, prospectus, statement, or other document required by or for the purposes of any of the provisions of the Companies Act. The essence of an offence under this section is not merely the submission of an inaccurate or defective document, but the conscious, deliberate, and intentional introduction of falsehood coupled with the requisite *mens rea* (guilty mind). Criminal penal liability of this severity can never be fastened vicariously, on the basis of loose suspicion, or through abstract association. The gist of this section is *mens rea*, which can be established only when *mala fides* or a want of good faith on the part of the director is shown. From the facts of the present case, the petitioner had merely made a statement as required under Section 58 as an expert. An independent professional who relies upon books, records, and data furnished by the management cannot be hauled up under Section 628 without specific, concrete allegations and material evidence showing direct complicity or conscious knowledge of falsification. The complaint before the trial court miserably failed to disclose any such legal nexus qua the petitioner.

6.6 The penal provisions invoked against the petitioner, Section 628 read with Section 75 of the 1956 Act, carry a maximum substantive punishment of imprisonment for a term of up to two years. Under Section 468(2)(c) of the Cr.P.C., the strict period of limitation prescribed for taking cognizance of an offence punishable with imprisonment exceeding one year but not exceeding three years is three years. The complaint itself alleges

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that the company came out with a public issue of equity shares vide prospectus dated 05.01.1996 wherein the present petitioner was a signatory to the prospectus. The complaint itself establish that the prospectus was dated 05.01.1996 whereas the compliant is dated 21.06.2002 reflecting an inordinate, unexplained, and colossal delay of nearly six years, which is two times the outer limit prescribed by Parliament under Section 468.

6.7 The Apex Court in the case of *Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director, Dr. K.M. Cherian* reported in *(2014) 2 SCC 62*, held that for the purpose of computing limitation under Section 468, the relevant and decisive date is the date of filing of the complaint or the initiation of criminal proceedings. Although Section 473 of the Cr.P.C. empowers a court to take cognizance after the expiry of the limitation period if the delay has been properly explained and condonation of such delay is necessary in the interest of justice, a thorough perusal of the complaint and records reveals an absolute absence of any application for condonation of delay, nor is there any plausible explanation offered by the ROC for the lapse of nearly six years in filing of the complaint.

7. In view of the above, the captioned petition stands allowed. Criminal Case No. 136 of 2002 pending before the Court of the learned Additional Chief Metropolitan Magistrate, Ahmedabad, along with all consequential proceedings arising therefrom qua the present petitioner, stands quashed and set aside.

8. Rule is made absolute to the aforesaid extent.

(P. M. RAVAL, J)

MMP

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