IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 139 OF 2014

The Pachora Peoples Co-operative Bank Ltd., Taluka Pachora, Dist. Jalgaon Through its Ex-Manager- Prakash Devidas Patil,Age 62 years, Occ: Retired ... **Petitioner**

VERSUS

1. Chandrakant s/o Shriram Sharma Age 61 years, Occupation: Business R/o Shahu Colony, Bhadgao Road, Pachora, Taluka Pachora, Dist.Jalgaon
2. The State of Maharashtra Through Police Station, Pachora … **Respondents**

Mr. Prashant D. Suryawanshi, Advocate for the petitioner
Mr. S. A. Ambad, APP for the State.
Mr. V. C. Sharma for the respondent

CORAM : T. V. NALAWADE

DATE : 6th July, 2015

PER COURT:

1. The petition is filed to challenge the judgment and order in Criminal Revision Application No.15/2006 which was pending in the Sessions Court, Jalgaon and also order made by the Judicial Magistrate First Class, Pachora in RCC No.45 of 2005 in the State case filed for offence punishable under sections 417, 420 and 423 of the Indian penal Code. The order of discharge is made in favour of the present respondent. This order is confirmed by the Sessions Court. This deision is challenged by the Cooperative Bank which had given report against the accused.

2. Allegations were made against the respondent accused that representation was made by the accused to the Bank that he was the owner of a space on which he wanted to make construction of shopping complex and for that he was in need of money and so he wanted to take loan of Rs.15 lacs from the Bank. He applied to the Bank on 16.12.2000. He made representation that he is owner of the property and it was free from any kind of encumbrance. The record like property card extract was produced. Certificate was issued from the SBI to the effect that from this Bank, no loan was take. The panel advocate had given report that title of the property was clear and there was no encumbrances. The property was purchased by accused in the year 1975 and the title was clear. Loan was sanctioned and Rs.5 lacs was disbursed.

3. It is the case of the complainant that the accused became defaulter and then steps were taken for obtaining certificate under section 101 of the Maharashtra Cooperative Societies Act by the Bank. It is contended that subsequently the complainant Bank learnt that loan was already taken by the accused from another Bank – State Bank of India, MIDC Branch Jalgaon. The loan of Rs.3 lacs was taken from that Bank. Suit was filed by the said bank against the accused for recovery of that amount. After learning about the aforesaid information, criminal case came to be filed for the aforesaid

offence.

4. In the application filed for discharge, the accused contended that nothing was suppressed by him and one of the Directors of the complainant Bank was guarantor to him in respect of loan taken from the State Bank of India. It is contended that search report was also not against him and it shows that he had capacity to repay the loan and security was sufficient. He contended that loan was already taken in the name of his wife of Rs.11 lack and the present transaction was created only to safeguard the interest of the complainant Bank. It was contended that there was no security in respect of previous loan and so, the record of the present loan was created. It is contended that the amount shown to be disbursed from the present transactions was mostly utilized for clearing of the debt which was taken in the name of his wife and that amount was Rs.10,30,027/-.

It is the case of the accused that he had utilized the money for construction of the shopping complex and he had offered the Bank to sell shops to repay the loan. It is contended that some cases were filed against the Director of the complainant Bank by the accused and to take revenge, the complainant Bank gave the present report against him. He has given number of case which was filed prior to registration of the present crime. The submissions were made before the learned JMFC and before this Court also that the entire loan amount has been cleared by the accused. The JMFC has considered the record and observed that to clear the debt outstanding of wife of the present accused, present transaction was made and that way, the present complainant Bank was benefited. The Court has considered the account extract. The court has observed that whatever amount was left was disbursed and that was used for construction of shopping complex. It was also observed that the complainant Bank was authorized to raise money by selling 10 shops and the learned JMFC has observed that the action of the accused was not of dishonest and it was not possible to presume that he had not capacity to repay the loan. It was also observed that there was no dishonest intention of the accused and so, the material available was not sufficient to frame charge. Submissions made show that the entire amount has been paid by the accused.

5. In view of the aforesaid circumstances, this Court holds that nothing can be achieved by setting aside the impugned order and allowing the accused to be prosecuted.

6. In the result, the writ petition is dismissed.

(T. V. NALAWADE, J.)

JPC