IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 118 OF 2009

1. Balaji s/o. Eknath Karale,
Age 45 years, Occu. Business
and Chairman of Dnyaneshwar
Nagari Sahakari Pat Sanstha Ltd.,
Parli Vaijinath, Dist. Beed.

2. Rajabhau s/o. Narayan Bawane,
Age 65 years, Occu. Retire from
Secretaryship of Dnyaneshwar Nagari
Sahakari Pat Sanstha Ltd., Parli
Vaimath at Subhash Chouk Parli
Vaijnath, District Beed. **....Petitioners.**

Versus

1. The State of Maharashtra

2. Pradip s/o. Ashruba Phutane,
Age 45 years, Occu. Labour,
R/o. Savtamali Mandir at Parli
Vaijinath, Dist. Beed. **....Respondents.**

Mr. N.R. Solunke, Advocate for petitioners.

Mrs. R.K. Ladda, APP for State.

Mrs. M.A. Kulkarni, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 11th June, 2015.

JUDGMENT :

1. The petition is filed for relief of quashing of proceeding bearing R.C.C. No. 9/09, which is pending at present in the Court of Judicial Magistrate, First Class, Parli-Vaijnath,

District Beed. The relief of setting aside the order made by the Sessions Court in Revision No. 64/2007 is also claimed. To the private complaint aforesaid number is given after its reregistration, after the order made by the Sessions Court. Both the sides are heard.

2. The private complaint is filed by the present respondent No. 2 against the petitioners for offences punishable under sections 218, 406, 420, 34 etc. of Indian Penal Code. The petitioner is a member of Dnyaneshwar Co-operative Credit Society, Parli-Vaijnath and he has taken a loan of Rs. 5000/- from the society in the year 2001. Accused No. 1 - Balaji was the Chairman of this Society and accused No. 2 – Rajabhau was the Secretary of the Society at the relevant time. It is the case of complainant that he was harassed by the accused as he had committed default in payment of installment of loan. It is contended that due to this approach of the accused, the complainant somehow collected the amount of Rs. 7,000/- and went to the office of Society on 10.5.2005. It is contended that the amount was accepted by accused No. 1 and No Dues Certificate bearing signature of accused No. 2 was handed over to him by accused No. 1. It is contended that complainant had prayed for such No Dues Certificate as he wanted to approach

bank for getting loan.

3. It is the case of complainant that when he received a notice in respect of proceeding filed by Society for getting recovery certificate from the office of Registrar, Co-operative Societies, he realized that the amount handed over by him was not credited in his loan account by the accused persons and he is deceived. It is contended that when he collected the copies of loan record produced before the Assistant Registrar, Co-operative Societies, he realized that the amount was misappropriated and by committing the breach of trust by the accused and the society was trying to get recovery certificate against him. He has contended that in the office of the Assistant Registrar, he has produced the record showing that he has already repaid the loan and No Due Certificate was issued in his favour. He has prayed for taking action against the accused in private complaint.

4. Initially, the order was made by the learned J.M.F.C. giving direction to police to make investigation under section 202 of Cr.P.C. After receipt of report of the police, the Magistrate directed the complainant, the respondent No. 2 to lead more evidence and then on 16.6.2007 Magistrate made order of issue

process for offence punishable under section 504 r/w. 34 of I.P.C.

5. Process was not issued for other offence mentioned in the complaint and so, the complainant filed Criminal Revision No. 64/2007 in the Court of Additional Sessions Judge, Ambajogai. The learned Additional Sessions Judge allowed the revision and directed the Magistrate to issue process for offences punishable under sections 218, 406, 420 and 34 of I.P.C. also. This order is challenged by the original accused.

6. The learned counsel for the accused has produced a copy of loan account of the complainant to show that even at present, the amount of more than Rs. 12,000/- is outstanding in the loan account. Affidavits of the petitioners are also filed. During arguments, it was submitted that petitioner No. 2 - Rajabhau died on 31.12.2014. Thus, there will be no question of taking action against petitioner No. 2 - Rajabhau.

7. A copy of No Dues Certificate issued in favour of the complainant dated 10.5.2005 is on the record. Admittedly, this document bears the signature of Rajabhau, Secretary of the Society. There is allegation that due amount was handed over by the complainant to accused No. 1 - Balaji, the Chairman of the

Society and Chairman handed over the No Dues Certificate signed by the Secretary. The contents of the certificate show that the certificate was issued in English and it was issued for the reason that the complainant was not in a position to make the payment and the Society was not able to recover it and so, the certificate was issued unwillingly. From this certificate, it can be said that accused wanted to show that it had become bad debt. As per the loan account, no installment of loan was paid after the year 2004 and the loan was disbursed in the year 1999 when there is the principal amount of Rs. 5000/-, as on 31.12.2008 the amount which was due from the complainant had gone up to Rs. 12774/-. At the end of year 2005 the amount due was around Rs. 7,000/-.

8. Some more record is produced and it shows that in a similar case, after giving No Due Certificate, a proceeding was started under section 101 of Maharashtra Co-operative Societies Act against one other person in which the complainant was a guarantor and in that matter, the Society tendered apology in writing, informing that there was no dues and the notice of recovery was issued to the principal debtor and guarantor due to oversight. The name of the principal debtor was Nageshwar.

9. It is the case of accused that by using force and threat, No Dues Certificate was obtained by the complainant from the accused. This defence cannot be considered at this stage when there are specific allegations and when there is material of aforesaid nature against the accused. In view of the nature of allegations, the Magistrate could have issued process for offences punishable under sections 406 and 420 of I.P.C., but the Magistrate issued process for offence punishable under section 504 of I.P.C. The learned Additional Sessions Judge has corrected this mistake. No error can be found in the decision given by the learned Additional Sessions Judge so far as the direction given by the learned Additional Sessions Judge to issue process for the offences punishable under sections 406 and 420 of I.P.C. is concerned. However, section 218 of I.P.C. is in respect of public servant and definition of 'public servant' is given in section 21 of I.P.C. Secretary of Co-operative Credit Society does not fall under this definition and so, the process cannot be issued for the offence punishable under section 218 of I.P.C. The learned J.M.F.C. is expected to take care and see that the process is not issued for offence punishable under section 218 of I.P.C. If it is issued, care can be taken to see that the charge is not framed for such offence.

10. The learned counsel for petitioners placed reliance on one case reported as **AIR 1999 SUPREME COURT 1028 [Rajendra Kumar Sitaram Pande and Ors. Vs. Uttam and Anr.].** This case is altogether on different point. The order of issue process was made and the point of tenability of revision under section 397 of Cr.P.C. was involved. The law on this point is well settled. Further, the present revision was filed as the learned J.M.F.C. had refused to issue process for aforesaid offences and so, the complaint was indirectly dismissed for aforesaid offences and that order was final.

11. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/