

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

CRIMINAL WRIT PETITION NO. 320 OF 2015

Prakash Gagandas Basantani **....Petitioner.**

Versus

The State of Maharashtra & Anr. **....Respondents.**

Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon, Advocate for petitioner.

Mr. U.H. Bhogle, APP for State.

Mr. Mukul Kulkarni, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 17th June, 2015.

ORDER :

1. The petition is filed to challenge the order made on Exh. 47 in RCC No. 260/2003 which is pending in the Court of Judicial Magistrate, First Class, Bhusawal. It is a police case filed for offences punishable under sections 420, 467, 468 etc. of Indian Penal Code on the basis of report given by one Co-operative Credit Society against the petitioner/accused. Both the sides are heard.

2. In the F.I.R., allegations are made by the Credit Society that the accused has deceived the Society by creating false record of State Bank, Bhusawal to show that he has

credited the amount of Rs. twelve lakh in the State Bank which was to be passed to the Society and which was in respect of loan amount of Rs. sixty lakh taken by the accused from the Credit Society. It is contended that practice is developed by the Society for convenience of its members and the Society is allowing its members to deposit the amount in State Bank, Bhusawal Branch in account No. 0100/005941 in respect of their loan installments. The State Bank is issuing counter slips, a statement and receipt in respect of the amount deposited and these documents are produced by the members in the Society and on the basis of these documents, entries are made in the loan account of members and amounts are shown to be credited in the loan account. When the petitioner had committed default in making the payment, the Society made inquiry with him and the accused produced the receipt and statement of the State Bank, Bhusawal Branch showing that he had deposited the amount of Rs. twelve lakh under those statements and receipts in the bank. On the basis of this record, the Society initially made entries in the account of petitioner and accordingly, amount was shown to be credited in the loan account. Subsequently, it was realized that no such amount was deposited in the State Bank and false record was created. The F.I.R. was then given.

3. During the course of investigation, police have collected the necessary material including the statements of the employees of the State Bank and it shows that false record is created by the accused of aforesaid nature and he has deceived the Society and the amount involved in the offence is around Rs. twelve lakh.

4. It is the case of petitioner that he had kept fixed deposits in the same Credit Society and the amount was around Rs. fourteen lakh. He has made allegations that he has handed over the receipt to the Society and the Society was expected to credit the amount in the loan account, but the Society did not credit the amount and that way he is deceived.

5. It appears that the dispute was filed under section 101 of Maharashtra Co-operative Societies Act and in the dispute, the accused had filed counter claim. The submissions made by the learned Senior Counsel shows that the dispute was withdrawn by the Society, but the counter claim was prosecuted by the accused and it was allowed. The submissions were made that subsequently, the Society approached for obtaining the certificate under section 101 of Maharashtra Co-operative Societies Act and accordingly, the certificate is issued, though

exparte. The submissions made show that this certificate is challenged in this Court and this Court has granted stay, subject to depositing of 50% of the amount of the certificate in this Court.

6. The learned Senior Counsel submitted that in view of the aforesaid circumstances, application was given by the accused under section 91 of Cr.P.C. at Exh. 47 in the criminal case and he had requested for giving directions to the first informant/ Society to produce the receipts in respect of fixed deposit of Rs. fourteen lakh. The learned Senior Counsel submitted that the production and consideration of this material is relevant in the present criminal case, but the J.M.F.C. has rejected the application.

7. This Court has gone through the reasoning given by the learned J.M.F.C. The nature of dispute is already quoted above. This is the case of creation of false record of State Bank to show that the accused had deposited the amount of Rs. twelve lakh in the bank and that amount was to be credited in the loan account of Society. Thus, the actions of the accused were totally different from the dispute with regard to the fixed deposit. It can be safely said in view of the aforesaid material

and circumstances, the dispute with regard to the fixed deposit of the accused has no relevance with the matter involved in the criminal case. This Court holds that the learned J.M.F.C. has not committed any error in rejecting the application.

8. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/