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

CRIMINAL REVISION APPLICATION NO. 87 OF 2015

Vishram s/o. Bhimrao Deshpande **....Applicant**

Versus

The Nashik Merchants Cooperative Bank Ltd., Nashik Branch at Aurangabad and Ors. **....Respondents.**

Mrs. R.R. Mane, Advocate for applicant.

Mr. P.B. Vikhe-Patil, Advocate for respondent No. 1.

Mr. S.V. Natu, Advocate for respondent No. 6.

WITH
CRIMINAL APPLICATION NO. 1888 OF 2015

Atul s/o. Ajit Mishra **....Applicant**

Versus

The Nashik Merchants Cooperative Bank Ltd., Nashik and Ors. **....Respondents.**

Mr. S.V. Natu, Advocate for applicant.

Mr. P.B. Vikhe-Patil, Advocate for respondent No. 1.

Mr. R.R. Mane, Advocate for respondent No. 5.

CORAM : T.V. NALAWADE, J.
DATED : 3rd July, 2015.

ORDER :

1. First proceeding is filed to challenge the judgment and order of Criminal Revision No. 36/2014 which was pending in

the Court of Additional Sessions Judge, Aurangabad. The order made by the learned J.M.F.C. of dismissing the private complaint filed against petitioner is set aside and it is observed that the process needs to be issued for offences punishable under sections 418, 420 r/w. 34 of Indian Penal Code. The second proceeding is filed to challenge the same decision of Sessions Court, but by different accused against whom also decision is given by the Sessions Court that process needs to be issued for offences punishable under sections 418 and 420 r/w. 34 of I.P.C. Both the sides are heard.

2. The private complaint is filed by one Co-operative Bank from Aurangabad. Allegations are made that accused No. 1 is the Member of Co-operative Bank and he had applied for loan of Rs. two lakh. He had shown two properties like plot No. 7 from Survey No. 718/P situated at Chikhalthana, Aurangabad and plot No. 15 from Laxminagar, Kumbhefal, Aurangabad owned by accused No. 4 as securities for aforesaid loan. It is contended that these two properties were given as security for the loan. It is contended that accused No. 5, one advocate had given search report dated 6.1.2011 in respect of one property and it was to the effect that the land was free from encumbrances and it was owned by the Member, who had applied for the loan. The

valuation report in respect of this properties was given by accused No. 6, one architect. He had given report that it was freehold property and it's value was more than Rs. four lakh.

3. The principal debtor made default in making the payments of installments and so, bank started taking action for recovery of amount. Action was taken under section 13 (2) of the Securitization Act also and then bank realized that both the properties were already sold in the year 2009 and 2010, before the date of mortgage. It is the case of complainant bank that bank is cheated by the principal debtor and the accused Nos. 5 and 6, advocate and architect had joined hands with the principal debtor and they gave false report of aforesaid nature and due to that loan was given by the bank.

4. The learned counsel for petitioner from the first proceeding placed reliance on the case reported as **AIR 2012 SCW 5139 [Central Bureau of Investigation, Hyderabad Vs. K. Narayanrao].** He submitted that in that case, when the panel advocate had given search report, but the Apex Court held that it is only legal opinion of the advocate given in the capacity of panel advocate and he did not point out actual ownership of the properties. The search report given by the advocate is

quoted by the Apex Court in the case cited supra and it is as under :-

> "SEARCH REPORT :
> I have verified the title deed of Shri. N.S. Sanjeeva Rao in the office of Sub-Registrar of Uppal, Hyderabad on 18.7.2003 and found that the sale transaction between parties, schedule property stamp paper, Regd. Sale Deed No. 1234/1980 are genuine. The verification receipt is enclosed herewith.
>
> (K.NARAYANRAO)
> ADVOCATE"

In view of the aforesaid nature of search report, the Apex Court held that the case against the advocate needs to be quashed.

5. The facts of the present case are altogether different. In the present case, the search report given by the advocate runs in to six pages. The search report shows that the advocate scrutinized the documents like 8-A form issued by Village Panchayat, Kumbhefal, copies of sale deed dated 24.8.2009 in respect of plot No. 15 from Gat No. 37. He informed to the bank that Laxmibai Navnath Rokde, debtor, is the owner and possessor of the said property. He informed that he had verified the record of Index II register. He verified that the property was free from all encumbrances and was having clear

marketable title. After mentioning all these things, he again mentioned that bank needs to obtain copy of 8-A form, copy of sale deed, N.A. order etc. Thus, the report was given by the advocate that the person, who applied for the loan was title holder of the property. The learned counsel for applicant submitted that there is possibility that the sale deed was already executed before the mortgage and it could not be noticed by the advocate probably because the registration was done in other office of Sub-Registrar. This defence cannot be considered atleast at this stage. When the advocate prepares the search report and mentions aforesaid things, it is his duty to see and confirm as to whether such sale deeds are registered in a particular office and he is expected to inspect the record of that office. Thus, atleast at this stage, it cannot be said that the advocate has not committed any wrong.

6. The report of architect shows that he informed to the bank that it was freehold property and its value was Rs. four lakh. For giving the valuation certificate, the architect is expected to visit the site. The assessment extract prepared by the Village Panchayat shows that there is construction on this plot and one lady, third party, was occupying the said property. The property was already sold by the person who had applied for

loan. It is clear that the architect did not visit the site for preparing the report. In view of these circumstances, it can be said that there is no force in the contentions made by the architect that he has not given report to help the debtor to take the loan from the bank.

7. It is not disputed that the bank could not recover anything as the property which was mortgaged to it was already sold. There was nothing left with the borrower or guarantor to execute mortgage document in favour of the bank. The learned J.M.F.C. did not consider the aforesaid record in proper perspective and that is done by the Sessions Court. This Court sees no reason to interfere in the decision given by the Sessions Court. Such instances are increasing day by day. There is one circumstance like appointing architect from Jalna district for giving valuation report in respect of the property situated in Aurangabad and that can be used against the Manager of the Bank. There is one more circumstance that the valuation in respect of the second property or the search report in respect of the second property mortgaged was not collected and that property was also already sold. These circumstances could have been used against the Manager of the bank. However, that point is not involved in the present matter.

8. In the result, both the proceedings stand dismissed.

[T.V. NALAWADE, J.]

ssc/