

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 3072 OF 2004

Rajendra Madhavgiri Gosavi and others

.....Applicants

V/s.

Baburav Khanderao Pingal and others

....Respondents

Ms. Smita Gaidhani for Applicant

Mr. Ashok B. Tajane for respondent

Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 7, 2015.

PC :

Heard respective counsel.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) It is the case of prosecution that in the year 1996, Baburav Pingal filed a complaint before Judicial Magistrate First Class, Pimpalgaon alleging therein that there is a Multipurpose Co-operative Society in Lonawadi village, Taluka Niphad. That present applicants are shown as original accused nos. 4, 5 & 6. According to the complainant, a proposal was made by Co-operative society for seeking loan on the land belonging to the complainant. It is alleged that complainant had received a notice of recovery of loan dated 23/07/1997. In fact, complainant had not

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applied for any loan. Notice was replied by the complainant on 30/07/1996. Complainant had realized that bank had disbursed the loan in the name of the complainant and his son and had sanctioned the loan to the tune of Rs. 44,200/- and the same had been misappropriated in connivance with present applicants. Learned Magistrate had recorded the verification statement of the complainant and had called for report under section 202 of Code of Criminal Procedure, 1973.

4) On 07/04/1997, report under section 202 of Code of Criminal Procedure, 1973 was submitted. It was shown in the report that present applicant no. 3 had failed in his duties and that all accused in connivance with each other had misappropriated the amount of Rs. 44,200/-. On 21/04/1997, learned Magistrate had issued process against all accused under sections 166, 167, 403, 408, 409, 415, 418, 420, 464, 465, 466 & 468 r/w 34 of Indian Penal Code. Present applicants had filed an application seeking relief of recalling the process as contemplated in the Judgment of Hon'ble Apex Court in the case of **K. M. Mathew V/s State of Kerala and Anr (1992 AIR 2206)**.

5) Learned Magistrate had rejected the application seeking relief of recalling the process and had observed that

“At any stage if it appears to the Court that there is no evidence against accused, the Court would discharge the accused as being short of evidence.”

5) The Hon'ble Apex Court in the case of **Adalat Prasad V/s Rooplal Jindal (2004) 7 SCC 338** has held that the law laid down in the case of **K. M. Mathew V/s State of Kerala and Anr** *cited supra* is no more a good law and recalling of the process would amount to review of the order passed by Magistrate which is not contemplated in the Code of Criminal Procedure, 1973. By the present application, applicants are challenging the order declining to recall the process. As on today, it is no more a good law. By an order dated 24/08/2005, this Court (Coram: Smt. V. K. Tahilramani, J.) had granted interim relief in terms of prayer clause (c) thereby staying further proceedings. In the intervening period, original complainant Baburav Pingal has expired on 12/10/2004. Learned counsel for the respondent submits that now the case is being prosecuted by son of original complainant as he had also

allegedly been cheated by the applicants.

6) In view of the fact that learned Magistrate at that stage had also observed that

“In the eventuality that there is no sufficient evidence to frame charge, accused would be discharged.”

7) Records were called in this Court. In the fitness of circumstances, this Court is of the opinion that as on today, applicants would be at liberty to file an application seeking discharge. Learned Magistrate shall consider the said application on its own merits on the basis of records and decide the discharge application within 4 weeks from the date of its filing.

ORDER

(i) Application is allowed.

(ii) Order dated 24/07/2001 passed by Additional Sessions Judge, Nashik thereby dismissing the revision application challenging the order of refusal to recall the process is quashed and set aside.

(iv) The ad-interim relief granted vide order dated 24/08/2005

stands vacated.

(v) Registry to send the records to the Court of Judicial Magistrate First Class, Pimpalgaon, forthwith.

(vi) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.