IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 3093 OF 2005

Mr. Dayanand Rao & Anr. … Petitioners.

V/s.

The State of Maharashtra & Others. … Respondents.

None for the Petitioners.
Mr. D. P. Adsule, A.P.P. for Respondent No.1- State.
Mr. C. Antony Louis, Respondent No.2 appears -in- person.

CORAM : A.V. NIRGUDE, J.
DATE : 01st DECEMBER,2015.

P.C. :

1 None for the Petitioners. This petition challenges order of issuance of process in case CC No. 24/SW/2005 passed by the learned Metropolitan Magistrate, 31st Court, Vikhroli. The facts of the case leading to this litigation can be stated in short as under :

2 The Respondent-Complainant stated that he had issued a cheque of Rs.750/- in August, 2014, favouring M/s. HDFC Securities. It was handed over to one Mr. Parag Dighe, who was representative of the Bank (the cheque amount was probably represented certain fees which the respondent-complainant wish to pay to HDFC Securities). The Respondent - complainant, however, informed Parag not to deposit the

cheque until he receives clear instructions to that effect. He even went to the Bank and asked them not to en-cash the cheque. Later on, he learnt that the cheque was encashed and the amount was transferred to the HDFC Securities. He questioned this transfer of amount to the officers of the Bank who assured him that they would look into the problem. Later on they replied to him which did not indicate that the cheque in question was encashed and his account was debited. However, after few days, HDFC Securities sent a cheque of Rs.750/- to the complainant, stating therein that they had received the amount from him and they were asked to return the same. Returning the same, in the circumstances narrated above, the complainant immediately alleges that the Bank had committed criminal breach of trust in respect of the amount which they had disbursed to the HDFC Securities. On the other hand, the complainant also said that the Bank distracted the record to prevent its production as evidence in the court etc.. In my view, the allegations do not make out any case against any petitioners for the offences punishable under any provisions of the Indian Penal Code. Assuming for the sake of the argument that the Bank did disburse the amount to HDFC Securities, despite "stop payment" instructions received from the complainant. Realizing that it was an error, they tried to correct their mistake and indeed, eventually no loss was caused to the complainant.

3 The question is - whether this lapse on the part of the Bank amounted to criminal breach of trust ? The answer is in negative.

4 If one peruses definition of the term “criminal breach of the trust” which is found in section 405 of the Indian Penal Code, he would find that the important ingredient of the offence is dishonesty and or misappropriation. The amount entrusted by the complainant with the Bank was no doubt transferred and therefore, it can be said that the Bank has temporary mis-appropriated the amount. But the question is - whether that has been done with the dishonest intention?. The entire episode clearly indicates that it was not dishonest act on the part of the Bank. It may amount to deficiency in service.

5 The second part of the allegation is destruction of evidence. Indeed there appears some substance in the allegation. Despite of debiting the amount of the cheque, the bank pass- book issued to the complainant did not show such debit. However, one must also see the circumstances behind this alleged act. The bank officers were trying to cover up their lapses. By no stretch of imagination, it can be said that what they did was a forgery of a pass-book or disappearance of evidence etc..

6 In the light of the above discussion, the criminal case initiated by the complainant deserves to be rest. It is dismissed. The order issuing process stands set aside.

7 The criminal writ petition is allowed in the above terms.

(A.V. NIRGUDE, J.)

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