

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4870 OF 2014

Mrs. Manisha Balwant Bhawe

... Petitioner.
(Org.Complainant)

V/s.

Mr. Sheshrao Ramrao Shete & Anr.

... Respondents.

Mr. V.D. Raut, Advocate for the Petitioner.

Mr. A. R. Patil, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 27th FEBRUARY, 2015

P.C. :

1 Heard finally.

2 Heard the learned counsel for the Petitioner and the learned APP for the State. None appears for Respondent No.1.

3 The petitioner had filed a complaint against respondent no.1 for the offences punishable under sections 409 and 420 of Indian Penal Code. The learned Magistrate had issued process to respondent no.1 to answer the said charges. After appearance of respondent no.1, evidence of PW-1 complainant/petitioner was recorded before the charge. She was cross-examined by the learned counsel for respondent

no.1 before the trial court. Evidence of PW-2 Renuka Agilan was also recorded by the Magistrate. After having gone through the evidence of two witnesses, the learned Magistrate had come to the conclusion that there were earlier transactions between petitioner and respondent no.1 and that the petitioner had extended loan to various other persons also. It appears that the learned Magistrate was of the view that the amount was not given by the petitioner to respondent no.1 for investing in - "Bhagyoday Finance Corporation" run by respondent no.1. It may be noted here that this evidence of PW-1, that she had given Rs. 75,000/- to respondent no.1 for investing in Bhagyoday Finance could not be rebutted. The learned Magistrate was of the view that there was no dishonest intention on the part of respondent no.1 - Sheshrao Shete. It is also observed by the learned Magistrate that the complaint was filed after five years of the transaction and that had there been any dishonest or fraudulent intention on the part of respondent no.1, the petitioner would have filed a complaint long back.

4 In my opinion, the learned Magistrate has traveled beyond his jurisdiction under section 245 (1) of Cr.P.C. which reads as under :

"245(1). If, upon taking all the evidence referred to in section 244, the Magistrate considers,

for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.”

It is, therefore, clear that if the evidence is of the nature that even if it is not rebutted it would not bring to a conviction then only the Magistrate can discharge the accused. In the present case, PW-1 has clearly stated that money was taken from him for investing in Bhagyoday Finance. It is not the case of respondent no.1 that he had invested money in Bhagyoday Finance. It is an admitted position that respondent no. 1 had taken amount of Rs. 75,000/- from the petitioner for investing in Bhagyoday Finance. A cheque of Rs.75,000/- was given by the petitioner to respondent no.1 which was encashed by respondent no.1 from his account. Respondent No.1 did not give receipt nor did he give any proof to the petitioner that the amount taken from the petitioner was invested in Bhagyoday Finance. As such in my opinion, there was a prima facie case for the offence punishable under section 420 of the Indian Penal Code. Had respondent no.1 not induced by making a false representation to the petitioner that her amount would be invested in Bhagyoday Finance, the petitioner would not have parted with the amount of Rs. 75,000/-. As such, prima facie, there is inducement, dishonest intention and parting of cash amount of the petitioner. It is a fit case to frame a charge under section 420 of the IPC against respondent no.1.

5 For all these reasons, I have come to the conclusion that the order dated 9th October, 2012 passed by the learned Magistrate discharging respondent no.1 is set aside. The order passed by the learned additional Sessions Judge Mr. S. T. Dhawale in criminal revision no. 6 of 2013, rejecting the revision application of the petitioner is also set aside.

6 The learned Magistrate is directed to frame charge under section 420 of IPC against respondent no. 1 and proceed further in accordance with law.

7 The parties to appear before the court on 24th March, 2015.

8 The trial court shall dispose of the case as early as possible in view of the fact that the petitioner is a senior citizen, aged about 66 years.

9 The trial shall be concluded within a period of six months from the date of the receipt of this order.

(JUDGE)