

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
Criminal Writ Petition No. 328 of 2014
[Hemchandra Doduraj Kamble Vs. State of Mah. & six others]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. Sudhir Malode, Adv., for the petitioner.
Mr. T.A. Mirza, APP for respondent nos. 1 to 3.
Mr. M.V. Samarth, Adv., for respondent nos. 4 to 7.

**CORAM : A.B. CHAUDHARI AND
P.N. DESHMUKH, JJ.**

DATE : 05th February, 2015.

01. Heard learned counsel for the rival parties at length.

02. The grievance of the petitioner is that his wife, who is working as Asstt. Teacher in St. John High School, Mohannagar, Kamptee Road, Nagpur, had given him a cheque bearing no. 083365 dated 18th March, 2014 for withdrawal of amount of Rs. 1,00,000-00 from her account with the Nagpur District Central Co-operative Bank, Gandhibag Branch, Nagpur. Petitioner presented the said cheque for encashment with the Nagpur District Central Co-operative Bank, Gandhibag Branch, Nagpur, and was given a token, but the payment was refused. He then made enquiry as to why the payment was refused when the balance in the account of his wife was Rs.

1,13,952-00 and, thus, he went to respondent nos. 6 and 7 – senior officers of the Nagpur Distt. Central Co-operative Bank; but they did not pay heed. The petitioner, therefore, had no alternative but to lodge a written report to the Police Station and accordingly he lodged a report with Ganeshpeth Police Station, Nagpur, complaining that a cognizable offence under Section 406, 409, 109, 120-B read with Section 34 of Indian Penal Code, was committed by the respondent nos. 4 to 7. But since nothing was done, the petitioner relies on the decision of the Larger Bench of Supreme Court in the case of **Lalita Kumari Vs. State of UP** [(2014) 1 SCC (Cri) 524] and submits that the respondents have also committed contempt of the Judgment of the Apex Court also.

03. Petitioner has then stated in the petition that despite there being sufficient credit balance in the account of his wife following deposit of payment of earned wages or salary of his wife, who is a teacher and many such employees, they are not being allowed to withdraw their funds by the Nagpur Distt. Central Co-operative Bank, due to which the survival of the employees like the wife of petitioner in this district has become difficult. The Bank has no authority or reason to commit breach of trust with the petitioner or his wife.

04. The petitioner then submitted that the State of Maharashtra had made it compulsory for all the aided schools in the State of Maharashtra to make the payment

of salaries of the teachers only through the District Central Co-operative Banks, including the Nagpur District Central Co-operative Bank for the Nagpur District. He submitted that the said direction of the Govt. of Maharashtra clearly violates Articles 14 and 21 of the Constitution of India. Petitioner then submitted that the Nagpur Distt. Central Co-operative Bank is in financial doldrums because of the scam, fraud/misappropriation which occurred in the said Bank a few years ago. But then, according to the counsel for the petitioner, the employees of Zilla Parishad and the aided schools, who have no concern with the Nagpur Distt. Central Co-operative Bank, cannot be allowed to suffer and cannot be deprived of their earned wages. Lastly, Counsel for the petitioner submitted that thousands of such employees of aided schools as well as Zilla Parishad schools were made the scapegoats, inasmuch as salaries of teachers and non-teaching staff are being misappropriated in the same manner as in the case of wife of the petitioner.

05. Per contra, Mr. Samarth, learned counsel for respondent nos. 4 to 7, with his usual vehemence, opposed the Writ Petition firstly on the ground that the petitioner has no locus standi to institute the present Writ Petition, as the question is about the account of wife of the petitioner. We overrule the said objection, since the petitioner is the husband of the teacher-employee and the cheque was given to him by his wife for withdrawal of amount of Rs. 1,00,000-00 and the Bank,

for no reasons, refused to honour the cheque, though the deposit in the account was Rs. 1,13,952-00. Thus, there is a cognizable offence, which took place, and in respect of a cognizable offence, any person can lodge an information by way of FIR which the petitioner has done.

06. The next question is about the Nagpur Distt. Central Co-operative Bank not making any payment of the earned salaries of the employees due to its own Circular dated 14th March, 2014 and all the amounts in deposit in savings accounts on or before 14th March, 2014. We have seen the Affidavit-in-Reply dated 6th June, 2014 filed by the Police Station Officer, Police Station, Ganeshpeth, Nagpur. We quote Paragraph 4 from his Affidavit-in-Reply, which reads thus:-

“4. It is submitted that after receiving report on 18.3.2014 of the petitioner the Investigating Agency has done preliminary enquiry/investigation. The Investigating Agency recorded the statement of Chief Officer of the Bank Mr. Devendra Wankhede and Branch Manager Smt. Sandhya Dani. In both the statement it reveals that they have received a letter dated 14.3.2014 from the Chief Executive Officer, Nagpur District Central Co-operative Bank, Gandhibag Branch, Nagpur Central Cooperative Bank, Gandhibag Branch, Nagpur mentioning that, only salary of the concerned employees may be disbursed and earlier amount deposited in the Bank of the said employees are not allowed to withdraw until further orders. The said letter dated 14.3.2014 is annexed hereto and marked Annexure-R-I for kind perusal of this Hon'ble Court.

In the preliminary enquiry/investigation the Investigating Agency also found that in the Account No. 16536 of Rekha Kamble the amount of Rs. 1,13,952/- is shown as balance amount on 15.3.2014. Therefore, as per the preliminary enquiry/investigation conducted by the Investigating Agency, it is found that no cognizable offence can be registered against the respondent No. 4 to 7 as prayed by the petitioner.”

There is a reference to Annexure-R-I – Circular dated 14th March, 2014 of the Chief Executive Officer of the Nagpur Distt. Central Co-operative Bank. With reference to the said document [Annex. R-I] – Circular, we repeatedly asked Mr. Samarth, learned counsel for respondent nos. 4 to 7 Mr. Samarth, learned counsel for respondent nos. 4 to 7, as to under what authority the Chief Executive Officer has directed all the Branch Managers of his Bank not to allow withdrawal of any amount from the salary accounts of the teachers or employees in deposit on or before 14th March, 2014. The explanation given by Mr. Samarth is that the Reserve Bank of India had slapped prohibition on accepting deposits by Nagpur Distt. Central Co-operative Bank because of its financial position on 9th May, 2012 and that is why it is unable to accept any deposit from the public. Pointing out Affidavit-in-Reply filed by respondent nos. 4 to 7, he submitted that it is because of the financial position of the Bank which is in doldrums that the amount was not allowed to be withdrawn in respect of the petitioner as well as others and, therefore, the Circular was issued by the Chief Executive officer on 14th

March, 2014.

07. We have been made aware that the Reserve Bank of India had slapped some restrictions on Nagpur Distt. Central Co-operative Bank after gilt scam had taken place in this Bank in the year 2002. As stated by Mr. Samarth before us, the last order not to accept the deposits is dated 9th May, 2012. But then, even the last aforesaid order and earlier order putting the ban or restriction nowhere permitted the Bank to misappropriate the salaries of the teaching or non-teaching staff of aided schools or Zilla Parishad schools. What is most surprising is that due to the compulsion made by the State Govt., for making payment of salaries through the District Co-operative Banks in the State of Maharashtra, payment of salaries of the teaching and non-teaching employees of the aided schools is made only through these Co-operative Banks and, thus, in our opinion, the State Govt. was fully responsible in the matter of abetment of offence for breach of trust by issuing directions to route the payment of salaries of such employees only through the Distt. Central Co-operative Banks in the State of Maharashtra, despite fully knowing the poor financial condition of the scam-hit Co-operative Banks. As a matter of fact, this Court [Coram : A.B. Chaudhari, J.], had made a recommendation to the State Govt. way back in the year 2009 not to make it compulsory to have route of the payment of salaries of teaching, non-teaching and other employees or other organizations through the Co-operative Banks hit by

financial scams. It is unfortunate that even till this date, the State Govt. has not bothered to consider the said recommendation.

08. We, thus, find that issuance of the said Circular dated 14th March, 2014 by the Chief Executive Officer of the Nagpur Distt. Central Co-operative Bank in the absence of any authority from the Reserve Bank of India not to make payment of even salaries of the teaching and non-teaching staff or others in deposit on or before 14th March, 2014 constitutes criminal breach of trust. It pains us that the employees, who earn their salaries after putting in work under their respective employers, are being asked to deposit their payments of salaries with the scam-hit Nagpur Distt. Central Co-operative Bank, from which they are not being paid their salaries and this is going for last few years. In our opinion, serious offences under Sections 405 read with Sections 406, 409 and 109 of Indian Penal Code have taken place for the last few years, so also in the instant case. The wife of the petitioner as well as the petitioner have a fundamental right to receive the earned wages and merely because the Co-operative Bank enjoys the protective umbrella from the State Govt., a citizen cannot be left high and dry.

09. To sum up, we direct the respondent no.4 - the Nagpur District Central Co-operative Bank to make payment of the entire balance amount of salary of the petitioner's wife to her within a period of seven days

from today under the present cheque. If the petitioner's wife wants the entire balance even as on date, namely 14th March, 2014, the same also must be paid to her, so also other teaching and non-teaching employees whose payments are deposited with the Nagpur Distt. Central Co-operative Bank.

10. We direct the Police Station Officer, Police Station, Ganeshpeth, Nagpur, to proceed according to law by following the Judgment in the case of Lalita Kumari Vs. State of Uttar Pradesh [cited supra]. In so far as the contention about contempt of the Judgment of Apex Court is concerned, we need not dwell upon it. We, therefore, dispose of the petition with the above directions.

11. At this stage, Mr. Samarth made a request for staying of this order for a period of eight weeks. However, in the light of the above tale-telling facts and continuing serious injustice to the citizens, we find no substance in the prayer for stay. We, therefore, reject the same.

12. Criminal Writ Petition No. 328 of 2014 is disposed of.

Judge

Judge

