IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 24810 of 2014 (A)

PETITIONERS:

1. SASIDHARAN P., MANAGER, MAIN BRANCH,
   KASARGOD DISTRICT CO-OPERATIVE BANK LTD.,
   KASARAGOD DISTRICT.

2. ARUN.B., SENIOR ACCOUNTANT
   KASARGOD DISTRICT CO-OPERATIVE BANK LTD.,
   MULLERIA BRANCH, KASARAGOD.

3. AMRITHARAJ, SENIOR ACCOUNTANT,
   KASARGOD DISTRICT CO-OPERATIVE BANK LTD.,
   HOSANGADI BRANCH, MANJESHWAR,
   KASARAGOD DISTRICT.

BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU

RESPONDENTS:

1. KASARGOD DISTRICT CO-OPERATIVE BANK LTD.
   REP. BY ITS GENERAL MANAGER, HEAD OFFICE
   KASARAGOD - 671 121.

2. THE PRESIDENT, KASARGOD DISTRICT CO-OPERATIVE
   BANK LTD., HEAD OFFICE, KASARAGOD - 671 121.

3. STATE OF KERALA REP. BY THE SECRETARY TO GOVT.,
   DEPARTMENT OF HOME, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

4. THE REGISTRAR, CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM-695 001.

5. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
   CIVIL STATION, VIDYANAGAR, KASARAGOD-671 314.

6. THE STATE POLIE CHIEF, POLICE HEAD QUARTERS,
   THIRUVANANTHAPURAM-695 001.

7. ZOHARA, W/O USMAN, THACHILAPARAMBU,
   MANGALPADY VILLAGE AND POST, KASARGOD
   TALUK AND DISTRICT - 671 324.

8. ISMAIL (DELETED AS PER ORDER OF THIS HON'BLE COURT).

9. A.NARAYANA ACHARY, S/O AITHAPPA ACHARY,
   MIYAPATHAVU, MEENJA VILLAGE AND POST,
   KASARAGOD TALUK AND DISTRICT - 671 124.

R1-R2 BY ADV. SRI.JAWAHAR JOSE
R9 BY ADV. SRI.BECHU KURIAN THOMAS
R3 TO R6 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 24810 of 2014 (A)

PETITIONER'S EXHIBITS:

EXT.P1.TRUE COPY OF STATEMENT GIVEN BY SMT.ZOURA ON 24/12/2013 ALONG WITH ENGLISH TRANSLATION.

EXT.P2.TRUE COPY OF STATEMENT GIVEN BY ISMAIL ON 24/12/2013 ALONG WITH ENGLISH TRANSLATION.

EXT.P3.TRUE COPY OF THE UNDERTAKINGS GIVEN BY NARAYANA ACHARYA ON 24/12/2013 ALONG WITH ENGLISH TRANSLATION.

EXT.P4.TRUE COPY OF THE NEWS INTEM IN MALAYALA MANORAM ON 29/12/2013 ALONG WITH ENGLISH TRANSLATION.

EXT.P5.TRUE COPY OF THE NEWS INTEM IN DESHABHIMANI ON 29/12/2013 ALONG WITH ENGLISH TRANSLATION.

EXT.P6.TRUE COPY OF THE REPRESENTATION DATED 30/4/2014 SUBMITTED BY THE 1ST PETITONER TO THE 1ST RESPONDENT

EXT.P7.TRUE COPY OF THE REPRESENTATION DATED 30/4/2014 SUBMITTED BY THE 2ND PETITONER TO THE 1ST RESPONDENT

EXT.P8.TRUE COPY OF THE REPRESENTATION DATED 30/4/2014 SUBMITTED BY THE 3RD PETITONER TO THE 1ST RESPONDENT

EXT.P9.TRUE COPY OF THE MEMO DATED 17/7/2014 ISSUED BY THE 1ST RESPONDENT TO 1ST PETITIONER

EXT.P10.TRUE COPY OF THE MEMO DATED 17/7/2014 ISSUED BY THE 1ST RESPONDENT TO 2ND PETITIONER

EXT.P11.TRUE COPY OF THE MEMO DATED 17/7/2014 ISSUED BY THE 1ST RESPONDENT TO 3RD PETITIONER

EXT.P12.TRUE COPY OF THE NOTICE DATED 16/7/2014 ISSUED BY THE JOINT AUDIT DIRECTOR ALONG WITH ENGLISH TRANSLATION

EXT.P13.TRUE COPY OF THE STATEMENT DATED 25/7/2014 SUBMITTED BY THE 1ST PETITIONER BEFORE THE JOINT AUDIT DIRECTOR.

EXT.P14.TRUE COPY OF THE STATEMENT DATED 25/7/2014 SUBMITTED BY THE 2ND PETITIONER BEFORE THE JOINT AUDIT DIRECTOR.

EXT.P15.TRUE COPY OF THE STATEMENT DATED 25/7/2014 SUBMITTED BY THE 3RD PETITIONER BEFORE THE JOINT AUDIT DIRECTOR.

EXT.P16.TRUE COPY OF THE REPLY DATED 28/7/2014 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P17.TRUE COPY OF THE REPLY DATED 28/7/2014 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P18.TRUE COPY OF THE REPLY DATED 28/7/2014 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P19.TRUE COPY OF THE REPRESENTATION DATED 8/9/2014 SUBMITTED BY THE 3RD RESPONDENT

EXT.P20.TRUE COPY OF SHOW CAUSE NOTICE DATED 30/9/2014 ISSUED BY THE FIRST RESPONDENT TO 1ST PETITIONER

EXT.P21.TRUE COPY OF SHOW CAUSE NOTICE DATED 30/9/2014 ISSUED BY THE FIRST RESPONDENT TO 2ND PETITIONER

EXT.P22.TRUE COPY OF SHOW CAUSE NOTICE DATED 30/9/2014 ISSUED BY THE FIRST RESPONDENT TO 3RD PETITIONER

EXT.P23. TRUE COPY OF THE EXPLANATION DATED 7/10/2014 SUBMITTED BY 1ST PETITIONER

EXT.P24. TRUE COPY OF THE EXPLANATION DATED 7/10/2014 SUBMITTED BY 2ND PETITIONER

EXT.P25. TRUE COPY OF THE EXPLANATION DATED 7/10/2014 SUBMITTED BY 3RD PETITIONER

EXT.P26. TRUE COPY OF MEMO OF CHARGES DATED 30/10/2014 ISSUED TO 1ST PETITIONER

EXT.P27. TRUE COPY OF MEMO OF CHARGES DATED 30/10/2014 ISSUED TO 2ND PETITIONER

EXT.P28. TRUE COPY OF MEMO OF CHARGES DATED 30/10/2014 ISSUED TO 3RD PETITIONER

EXT.P29. TRUE COPY OF REPORT DATED 21.8.2014 OF THE JOINT DIRECTOR OF CO-OPERATIVE AUDIT WITH TRANSLATION

EXT.P30.TRUE COPY OF PROPERTY LIST AND REPORT DATED 19.12.2014 IN CMP 6846/14 FILED BEFORE THE COURT OF CJM, KASARAGOD ALONG WITH TRANSLATION

EXT.P31. TRUE COPY OF STATEMENT SHOWING THE DETAILS OF SALARY AND DEDUCTIONS

EXT.P32.TRUE COPY OF REPLY DATED 28/11/2014 SUBMITTED BY 1ST PETITIONER

EXT.P33.TRUE COPY OF REPLY DATED 28/11/2014 SUBMITTED BY 2ND PETITIONER

EXT.P34.TRUE COPY OF REPLY DATED 28/11/2014 SUBMITTED BY 3RD PETITIONER

EXT.P35.TRUE COPY OF COMPLAINT DATED 11/12/2014 BEFORE THE CJM

EXT.P36.TRUE COPY OF STATEMENT SHOWING DETAILS OF SALARY AND DEDUCTIONS AS ON MAY 2015

RESPONDENT'S EXHIBITS:

ANNEXURE-I TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE 1ST PETITIONER BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD

ANNEXURE-II TRUE COPY OF THE SEARCH PETITION FILED BY THE 1ST PETITIONER BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD

ANNEXURE-III TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO THE SECOND PETITIONER

ANNEXURE I TRUE COPY OF THE SALARY CERTIFICATES OF THE PETITIONERS FOR THE MONTH OF JUNE 2015

EXHIBIT R1(a) TRUE COPY OF THE REPORT SUBMITTED BY THE REGIONAL MANAGER OF THE BANK

EXHIBIT R1(b) TRUE COPY OF THE REPORT SUBMITTED BY THE CHIEF VIGILANCE OFFICER OF THE BANK

EXT. R1(c) TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE 1ST PETITIONER BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD

EXT. R1(d) TRUE COPY OF THE SEARCH PETITION FILED BY THE 1ST PETITIONER BEFOR ETHE CHIEF JUDICIAL MAGISTRATE, COURT, KASARAGOD

EXT. R1(e) TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE POLICE

EXT. R1(f) TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO THE 2ND PETITIONER

EXT. R1(g) TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE BANK BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD

EXT. R1(h) TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE GOLD APPRIASER BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD

EXT. R1(I) TRUE COPY OF THE SALARY CERTIFICATES OF THE PETITIONERS FOR THE MONTH OF JUNE 2015 (3 IN NUMBER)

EXT. R1(J) TRUE COPY OF THE SALARY CERTIFICATES OF THE PETITIONERS FOR THE MONTH OF AUGUST 2015 (3 IN NUMBER)

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.24810 of 2014 A

Dated this the 17th day of September, 2015

JUDGMENT

Petitioners 1 and 2, the Branch Managers and the third petitioner, the Senior Accountant, all of them being the employees of the first respondent Bank, once worked in the Hosangadi Branch. As the events that unfolded while they were working in the said branch are material, it could be stated that the first petitioner worked in the said branch from 01.02.2011 to 09.01.2013; the second petitioner from 08.01.2013 to 24.02.2014, and the third petitioner from 16.07.2012 to 29.09.2014.

2. On 24.12.2013, the Regional Manager of the Bank conducted an inspection of the Branch and found serious irregularities. On the same day, based on his preliminary report, the Vice-President, the Deputy General Manager and other top ranked officials visited the branch and found

that respondents 7 and 8, apart from another person, obtained huge loans by pledging ornaments of spurious gold in collusion with the ninth respondent, the appraiser. The loans they thus raised ran into more than a crore of rupees.

3. Either with a view to protecting the image of the Bank or covering up the whole unsavoury issue, the authorities forced the petitioners to obtain additional housing loans to a tune of Rupees Fifteen lakhs each and remit the said amount on the same day to the gold loan accounts of respondents 7 and 8 and another person. All through in this judgment though the reference is being made to the loans of all three persons, since the third person has not been arrayed as a party (perhaps, felt to be not a necessary party), the reference to the loans of the respondents 7 and 8 will also, as a matter of narration, cover the third person's loan account as well.

4. As it emerges, the ninth respondent also seems to have contributed about Rupees thirty lakh towards the

three gold loan accounts. This arrangement of providing housing loan to the petitioners and ensuring remittance into the gold loan accounts was made by the management of the respondent Bank on 31.12.2013. It appears that even the persons who obtained the gold loans on the strength of the alleged spurious gold were also made to contribute substantially to the gold loan accounts.

5. In the course of time, on 30.04.2014, the petitioners submitted Exhibits P6 to P8 representations to the management, their employer, complaining that the recovery sought to be made from their salaries towards the forcibly sanctioned housing loan accounts is totally illegal and untenable. Notwithstanding Exhibits P6 to P8 representations, the management went ahead and issued Exhibits P9 to P11 memos on 17.07.2014 demanding recovery from the petitioners towards the additional housing loans obtained by them. Though on 28.07.2014 the petitioners issued Exhibits P16 to P18 replies, but to no avail.

6. In the meanwhile, the ninth respondent, the appraiser, complained to the Hon'ble Home Minister about what are said to be not-so-holy methods adopted by the management in resolving the issue of illegal gold loans by forcing him, apart from others, to pay huge amounts without any enquiry. When the said complaint was forwarded to the Registrar, he, in turn, required the Joint Audit Director to enquire into the allegations. Thus, acting on the directive of the Registrar, the Joint Audit Director issued Exhibit P12 notice to the petitioners, who, in response, submitted Exhibits P13 to P15 statements on 25.07.2014. That apart, the petitioners also submitted Exhibit P19 representation dated 08.09.2014 to the Government seeking an enquiry into the whole issue. When nothing further happened, the petitioners filed the present writ petition on 23.09.2014.

7. Soon after filing the writ petition, the management issued Exhibits P20 to P22 show cause notices dated

30.09.2014 to the petitioners, who in turn, submitted Exhibits P23 to P25 replies on 07.10.2014. Eventually the Management issued to the petitioners Exhibits P26 to P28 charge memos. In the meanwhile, the Joint Director of Co-operative Audit also submitted Exhibit P29 report, dated 21.08.2014, having investigated the allegations initially raised by the ninth respondent.

8. As can be seen from the record, the specific allegation in Exhibit P21, one of the show cause notices, is that the second petitioner was instrumental in clandestinely handing over the ornaments of spurious gold to the borrowers, including respondents 7 and 8. Despite the fact that the allegation was against the second respondent, nevertheless, the first petitioner filed Exhibit P35 private complaint arraying respondents 7 to 9 as accused. Based on the said petition filed by the first petitioner, the jurisdictional Magistrate issued a search warrant resulting in Exhibit P30 report submitted by the police. The search

report revealed that the ornaments were very much found in the Bank, though not in the usual place, the strong room.

9. Eventually, in the wake of these developments, the respondent Bank also woke up from its slumber and filed Exhibit R1(g) complaint, which was initially numbered as Crime No.13/2014 on the file of Kasaragode Police Station. Later, it was transferred to Kumbala Police Station and re-numbered as Crime No.20/2015. Thereafter, it was further transferred to the Crime Branch and re-numbered once again.

10. On the other hand, the first petitioner's private complaint was numbered as Crime No.19/2015 on the file of Manjeshwar Police Station. Even the said crime is also said to have been transferred to the Crime Branch and re-numbered along with the other crime filed by the management.

11. In the backdrop of the facts narrated above, the learned counsel for the petitioners has made very elaborate

submissions, matched by equally elaborate arguments by the learned counsel for the respondent Bank. I am of the opinion that in the light of the conclusion being presently arrived at in the matter, it may not be necessary to advert in detail to all those submissions on either side.

12. The fact, without cavil, remains that after the initial delay, the management has at last acted and lodged a complaint, which has been seized of by the Crime Branch presently. The fact further remains that the petitioners did obtain additional housing loans, perhaps under duress and threat of punitive action in the hands of the management, to make good the loss the Bank otherwise could have suffered on account of the huge gold loans sanctioned on the strength of the ornaments made of spurious gold.

13. The principal grievance of the petitioners is that almost 95% of their salary is being deducted for the additional housing loans they have been coerced to obtaining, as well as the previous loans. The learned

counsel for the respondent Bank has submitted that, in view of the pay revision, after the petitioners' filing the writ petition, their position has significantly improved. In this regard, the learned counsel for the respondent Bank has drawn my attention to Exhibit R1(j), as per which the three petitioners' take home pay is ₹ 25,160/-, ₹ 24,076/- and ₹ 17,690/- respectively.

14. The petitioners, having filed a reply, disputed the said contention of the respondent Bank that now they have a substantial take home pay. According to the learned counsel, there are many other liabilities to be met by the petitioners.

15. Be that as it may, on the suggestion of this Court, the learned counsel for the respondent Bank, deserving appreciation, has taken pains to persuade the management to have a mutually beneficial solution to the issue of deductions from the petitioners' salaries. To elucidate, it may be stated that instead of making an issue out of the

alleged excessive deductions, to the credit of the learned counsel for the respondent bank, he has reported that the management is willing to extend the benefit of a particular scheme, now in force, to the petitioners.

16. According to the learned counsel for the respondent Bank, if the petitioners make an application to deduct their salaries only towards the payment of the principal amount, deferring deductions concerning the interest, the petitioners could have their take-home pay substantially increased. In other words, the petitioners can have 60% of the interest saved so that the deductions could come down drastically. Quantifying the amount, the learned counsel for the respondent Bank has submitted that the petitioners would be required to pay about ₹ 10,000/- towards their EMI. Equally to the credit of the learned counsel for the petitioners, having taken instructions from his clients, he has reported that the petitioners will submit the necessary applications before the management.

17. The learned counsel for the petitioners has, however, submitted that this Court may fix a time frame for the management's processing the petitioners' applications for extending the benefit of scaling down the EMIs. It is his specific contention that any deductions that have already been and are presently being made shall be subject to the outcome of the domestic enquiry, as well as the criminal proceedings pending. In the end, the learned counsel for the petitioners has also urged this Court to issue suitable directions to the investing agency to expedite the investigation and conclude it at the earliest.

18. Thus, obviating the need of adjudicating on merits the issues raised in the writ petition, this Court is inclined to dispose of the writ petition with the following directions:

i. The Crime Branch, Economic Investigation, Kannur, shall expedite the process of investigation and see that the charge sheet/sheets are filed at the earliest.

ii. The petitioners are given liberty to make an application, as has been suggested by the learned counsel for the respondent Bank, for having the EMIs scaled down; once such an application is made, the respondent Bank shall take immediate measures to extend the benefit of the scheme that is said to be in force concerning payment of the principal amount, thereby deferring deductions towards the accumulated interest in the loan account.

It is, nevertheless, abundantly made clear that the above observations made in the present disposition shall not be taken as an expression or opinion of this Court on the merits of the matter. Both the authorities, the disciplinary authority and also the investigating agency, are at liberty to enquire into and investigate, as the case may be, the issues before them uninfluenced by any of the observations, if made, in the judgment, and complete the process at the earliest.

Before parting with the matter, the Court further makes it clear that the amount contributed by the petitioners towards gold loan accounts of respondents 7 and 8 as well as another loanee shall be subject to the outcome of the disciplinary proceedings that have been pending.

The writ petition is disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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