

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1305 OF 2007

1. Pravin s/o Devidasrao Deshmukh,
Age : 43 years, Occ: Business,
R/o: Durga Colony,
Opp. J.E.S. College, Jalna.
2. Devidas s/o Anand Deshmukh,
Age: 70 years, Occ: Retired,
R/o: as above.
3. Sushila w/o Devidas Deshmukh,
Age: 65 years, Occ: Business,
R/o. as above.
4. Anant s/o Pandit Sali,
Age: 37 years, Occ.: Service,
R/o: Agrasen Nagar,
Near J.P.C. Colony, Jalna.
5. Vijay s/o Pandit Sali,
Age: 40 years, Occ: and R/o as above.
6. Mangal d/o Laxman Sarode
@ Mangal w/o Dilip Sali
Age: 35 years, Occ: Household,
R/o as above.
7. Anmol S/o Shrimant Mohite,
Age: 30 years, Occ: Service,
R/o: Sheetal Kirana Stores,
Gandhi Nagar, Jalna.
8. Shrimant S/o Narayan Mohite,
Age: 55 years, Occ: Service,
R/o: as above.

... APPLICANTS
(Orig. Accused Nos.1 to 8)

VERSUS

Rajureshwar Nagri Co-operative Credit
Society Ltd., Jalna, Badi Sadak, Jalna,
Through its Chairman
Manoj s/o Shripal Jain.

... **RESPONDENT**
(Orig. Complainant)

...
Mr. Vijay Sharma, Advocate for Applicants.
None for Respondent.

...
CORAM : **V. K. JADHAV, J.**
DATE : 30th November, 2016.

ORAL JUDGMENT:

. By this criminal application, the Applicants / original
Accused Nos.1 to 8 seek quashing and setting aside the order of
issuance of process dated 17th March, 2007, passed by the learned
Chief Judicial Magistrate, Jalna, in a complaint bearing S.T.C. No.569
of 2007.

2 Brief facts giving rise to the present criminal application
are as follows:

The Respondent / original Complainant filed a
private complaint bearing S.T.C. No.569 of 2007 against the
Applicants before the Chief Judicial Magistrate, Jalna, for having
committed the offence punishable under Section 500 read with 34 of

the Indian Penal Code. It has alleged in the complaint that at the instigation and active help of Applicant / Accused No.1, original Accused Nos.2 and 3 issued letters to Jalna Peoples Co-operative Bank, Branch Jalna and Accused No.8 issued letters to Jalna District Central Co-operative Bank Limited, Branch Jalna, Applicant / Accused No.6 issued notice dated 12th February, 2007 to the Complainant stating that the Complainant had obtained blank cheque No.94031 from him in respect of the personal loan. It has also alleged in the complaint that the Applicant / Accused issued almost same worded letters vide Exhibit D-1 to D-7. It has further alleged that on 17th February, 2007, the Manager of the Respondent / Pat Sanstha handed over said letters to the Chairman / Complainant and thereafter, the Chairman of the said Pat Sanstha after due deliberation with other staff members of the said Pat Sanstha decided to file complaint against the Applicants. On the basis of these allegations, the learned Chief Judicial Magistrate, Jalna by its impugned order dated 17th March, 2007 issued the process against the Applicants / Accused for the offence punishable under Section 500 read with 34 of the Indian Penal Code. Hence, this criminal application.

3 The learned counsel for the Applicants submits that the Applicants have communicated to their banker about certain blank cheques, which are in the custody of Respondent / original Complainant and further requested the banker to stop payment of those cheques. The learned counsel submits that this is the communication between the customer and the banker without any intention of causing any harm to the reputation of the Respondent / Complaint and in order to protect the interest of the Applicants, such communication has been made in good faith attracting the exception 9 of Section 499 of the Indian Penal Code. In view of exception 9 of Section 499 of the Indian Penal Code, no case is made out and even by plane reading of the said communication filed alongwith the present application, no case is made out for issuance of process under Section 500 of the Indian Penal Code against the Applicants / original Accused. The learned Chief Judicial Magistrate, Jalna has issued the process mechanically without applying his mind.

4 None present for the Respondent / original Complainant.

5 On careful perusal of the said communication, it appears that this communication is between the customer and the bank,

instructing the bank to stop the payment in respect of certain cheques, which are in the custody of Respondent / original Complainant. On reading those letters, I do not find that those letters have been sent to the banker with an intention to cause harm to the reputation of the Respondent / Complaint. Even though the contents of the complaint accepted as it is, no case is made out for issuance of process under Section 500 of the Indian Penal Code against the Applicants / Accused. There is no mens-rea and the case of the Applicants squarely falls under exception 9 of Section 499 of the Indian Penal Code. In ordinary course, exceptions are required to be considered during full-fledged trial of the case, however, in the instant case even accepting the allegations as it is, no case is made out for issuance of process under Section 500 read with 34 of the Indian Penal Code against the Applicants / Accused. The impugned order passed by the learned Chief Judicial Magistrate, Jalna therefore, does not stand. Hence, the following order:

ORDER

- I. Criminal Application is hereby allowed in terms of prayer clause (B).

- II. Rule is made absolute in above terms.
- III. Criminal application is accordingly disposed of.

[V. K. JADHAV, J.]

ndm