

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 293 OF 2007

1. Prakash S/o Balkrushna Phalak,
Age 43 years, Occ. Business &
Director of Saraswati Credit Co-operative
Housing society,
R/o. Near Ashtabhuja Devi Temple,
Bhusawal, Tq. Bhusawal, Dist. Jalgaon.
2. Kishor S/o Sopan Patil,
Age 43 years, Occ. Business &
Chairman of Saraswati Credit co-operative
Housing Society,
R/o. Near R.K. Narkhede Vidyalaya,
Sharda Nagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
3. Vishram S/o Tukaram Baviskar,
Age 59 years, Occ. Director of Saraswati
Credit Co-operative Housing Society,
R/o. Gandhi Nagar, Khadka Road, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
4. Sharad S/o Ananda Choudhari,
Age 65 years, Occ. Director of Saraswati
Credit Co-operative Housing Society,
R/o. Gajanan Maharaj Nagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
5. Jhaverilal S/o Bansilal Kotecha,
Age 55 years, Occ. Director of Saraswati
Credit Co-operative Housing Society,
R/o. Ram Mandir Ward, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
6. Kalpana W/o Waman Patil,
Age 40 years, Occ. Service,
R/o. Govind Colony, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
7. Parshuram S/o Rama Bonde,
Age 42 years, Occ. Service,
R/o. Govind Colony, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

...Petitioners

Versus

1. The State of Maharashtra.
(Copy to be served on APP of High Court Bench at Aurangabad)
2. Ravi S/o Anantrao Patil,
Age 38 years, Occ. Driver,
R/o. Nemade Colony,
Khadka Road, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon. ...Respondents

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Mr. S.C. Bhosale, advocate h/f Mr. H.S. Bedi, advocate for the petitioners
Mr. P.G. Borade, A.P.P. for the respondent No.1-State
Mr. N.S. Patekar h/f Mr. P.R. Katneshwarkar, advocate for R. No.2
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CORAM : V. K. JADHAV, J.
DATED : 26th SEPTEMBER, 2016

ORAL JUDGMENT:-

1. The petitioners are seeking quashment of complaint bearing R.C.C. No. 535 of 2006 pending for adjudication before the learned J.M.F.C. Bhusawal.

2. Brief facts giving rise to the present writ petition are as follows:-

Respondent No.2 original complainant is a member of Saraswati Co-operative Credit Society Ltd.. In the year 1996, the complainant had borrowed loan from the society for business purpose. He had repaid certain amounts. Subsequently, he had also borrowed loan from the society on several occasions and never

repaid the outstanding dues. Respondent No.2 complainant has however, approached the Sessions Court, Jalgaon and filed complaint, alleging therein that the outstanding loan amount has been fraudulently shown in his name and he had never borrowed such huge amount from the society. It has also alleged in the complaint that some unknown person, at the instance of the present petitioners, threatened him of dire consequences in case the outstanding amount is not cleared. The learned Sessions Judge has forwarded the said complaint to J.M.F.C. Bhusawal and learned Magistrate, after recording verification statement of respondent No.2, pleased to call report of police under the provisions of Section 202 of the Cr.P.C. The learned Magistrate after perusal of said statement and the report of police, submitted under the provisions of Section 202 of Cr.P.C., issued process against the accused for the offences punishable under Sections 420, 468, 477, 504, 506 r.w. 34 of I.P.C.

3. Learned counsel for the petitioners submits that the petitioner No.1 was Chairman of Saraswati Co-operative Credit Society, petitioner No.2 is present chairman of the society, petitioner No.3 is present Director and Vice Chairman of the society, petitioner Nos. 4 and 5 are the ex-directors of the society, petitioner No.6 is Manager and Special Recovery officer appointed by the society and petitioner No.7 is pigmy agent of the said society. Respondent No.2 original

complainant had borrowed loan of Rs.1,00,000/- in the year 1996 and repaid an amount of Rs.61,804/- for which receipts have been issued. Furthermore, respondent No.2 had borrowed loan from the society on several occasions and lastly on 22.3.2002 he had borrowed loan of Rs.5,50,000/- on cash credit, for which father and wife of respondent No.2 are guarantors. He has not paid any amount and accordingly the outstanding dues alongwith interest and penal interest gone up to Rs.10,47,249/-. Even the Assistant Registrar, Co-operative Societies, Bhusawal, has issued recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act 1960 for recovery of outstanding dues. There are absolutely no allegations in the complaint and no details whatsoever are given in the complaint about cheating, forgery etc. Respondent No.2 had filed complaint with malafide intention to pressurize the petitioners and also in order to prevent the petitioners from taking any legal action against the complainant. Learned counsel submits that the Magistrate, without applying his mind, has entertained the complaint and issued process against the petitioners.

4. Learned counsel for respondent No.2 submits that the petitioners have not availed alternate remedy of filing revision before the Sessions Court and directly approached this Court by way of present writ petition. Even though respondent No.2 has repaid

substantial amount for the loan availed by him, entries to that effect have not been taken and in that way the petitioners had committed offence of cheating, forgery etc. Considering the verification statement of respondent No.2 and the police report under section 202 of Cr.P.C. the Magistrate has rightly entertained the complaint and issued process against the petitioners. There is no substance in the writ petition and writ petition is liable to be dismissed.

5. It is not disputed that respondent No.2 had availed the loan. Learned counsel for the petitioners brought to my notice the recovery certificate at page 21 of the petition issued by the Assistant Registrar, Co-operative Societies, Bhusawal. In view of provisions of sub-section (3) of Section 101 of the Societies Act, recovery certificate issued by the Assistant Registrar is final and conclusive proof of arrears of loan amount as mentioned therein. In the instant case, admittedly, respondent No.2 has not challenged the said certificate and said certificate has attained finality. Learned counsel for the petitioners submits that some part of loan has been recovered from respondent No.2 by selling his immovable property. Even learned counsel for respondent No.2 has also not disputed this position. Learned counsel for the petitioners has rightly pointed out that no details are given in the complaint about forgery and alleged act of cheating. So far as the allegations of threats given by some unknown

person, at the instance of petitioners and society, are concerned, the day, date and time of said incident are not mentioned and there are only general allegations in the complaint about the same. I do not think that the learned Magistrate has applied his mind while entertaining the complaint and by issuing process against the petitioners accused for the offences punishable under Sections 420, 468, 477, 504, 506 r.w. 34 of I.P.C.

6. In view of above discussion, in my view, continuation of the proceedings of R.C.C. No. 535 of 2006 would be an abuse of process of law. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is hereby allowed in terms of prayer clause "B".
- II. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/