

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 651 OF 2015

RAJENDRA S/O RAMCHANDRA NAGARKAR
VERSUS
THE STATE OF MAHARASHTRA & ORS

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Advocate for Petitioners : Mr. Ajinkya Reddy
APP for Respondent No.1: Ms. R. P. Gour
Advocate for Respondent No.7 : Mr. D.A. Madke

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CORAM : V. K. JADHAV, J.
DATED : 18th AUGUST, 2016

PER COURT:-

1. By consent of learned counsel for respective parties, heard finally.
2. Being aggrieved by the order passed by learned J.M.F.C. Court No.4, Ahmednagar in R.T.C. No. 644 of 2011, whereby the learned J.M.F.C. has issued process against only two accused persons for the offences punishable under Sections 417, 420, 465, 468 r.w. 34 of I.P.C. and said order is confirmed by the learned Additional Sessions Judge, Ahmednagar, vide order dated 15.11.2014, in Criminal Revision No. 270 of 2012, the petitioner-original complainant has preferred this writ petition.
3. Brief facts giving rise to the present writ petition are as follows:-

a) The petitioner is a member of Shri Yadnyvalkya Nagari Sahakari Patsanstha Limited, Ahmednagar. Sometime in the year 2003, the society had sanctioned and advanced loan to one lady Smt. Bebytai Kantilal Gandhi. One Mr. Abhaykumar Champalal Gandhi and another Mr. Prafulla Popatlal Khinvasara, stood as guarantors to the said loan transaction. The proposal of loan was recommended by one Mr. Prakash Sohoni. After fulfilling all requirements, the society, in its meeting dated 30.8.2003, had sanctioned the loan of Rs.30,000/- to said Bebytai Gandhi and accordingly had issued a cheque in favour of said Bebytai Gandhi. It is however, transpired that said Bebytai Gandhi, to whom the society had advanced the loan, had already expired on 20.2.2002 and death certificate, issued by Ahmednagar Municipal Corporation, is also placed on record to that effect. Even in the special audit, the auditor has also raised objection with regard to advancement of loan to the dead person.

b) The petitioner has therefore, filed a complaint before the court against all directors of the said society and the guarantors for having committed offences punishable under Sections 199, 420, 465, 409, 417, 468, 498 r.w. 34 of I.P.C. The learned Magistrate, Ahmednagar by order dated 20.6.2012 forwarded the said complaint for

investigation under Section 202 of Cr.P.C. The learned Magistrate, by order dated 3.11.2012 after perusal of the statement of the complainant and the report submitted by the police, issued process against the original accused No. 17 Prafulla Popatlal Khivasara and original accused No.18 Abhaykumar Champalal Gandhi, for having committed offences under Sections 417, 420, 465, 468 r.w. 34 of I.P.C. The learned Magistrate has further observed that the complaint as well as the other documents placed on record does not disclose specific role of accused Nos. 1 to 8 and 10 to 16. Consequently, the learned Magistrate has dismissed the complaint as against accused Nos. 1 to 8 and 10 to 16.

c) Being aggrieved by the same, the petitioner-original complainant had preferred criminal Revision application No. 270 of 2012 before the Sessions Court, Ahmednagar. The learned Additional Sessions Judge, Ahmednagar by its impugned order dated 15.11.2014 dismissed the revision by confirming the order passed by the Magistrate. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the society has disbursed the loan to the dead person. The said loan proposal was recommended by the accused Prakash Sohoni, who is one of the Director of the said Patsanstha. Said Prakash Sohoni had

recommended the said proposal as he was knowing Dr. Abhaykumar Gandhi. It is difficult to infer that said Prakash Sohoni was not knowing that loan was being sanctioned to the dead person, however, the same is not considered by the courts below. It was the duty of said Prakash Sohoni to verify the facts before recommending the case of the borrower. The Magistrate ought to have issued process against accused Prakash Sohoni also.

5. Learned counsel for the respondent-original accused Prakash Sohoni submits that as per the statement of Prakash Sohoni, recorded by the police during the course of investigation, as directed by the learned Magistrate under section 202 of Cr.P.C., the said respondent-accused was only knowing Abhaykumar Gandhi and accordingly he had recommended the proposal of his aunt. In fact, said Abhaykumar Gandhi had come with one woman in the office of Prakash Sohoni and introduced said woman to Prakash Sohoni as his aunt. Since Prakash Sohoni was knowing said Abhaykumar Gandhi, he had recommended the said proposal. Learned counsel submits that though Prakash Sohoni, who is one of the Director of the said Patsanstha and recommended the said proposal, he is not a sanctioning authority. The committee consisting of directors has the power to sanction the loan proposals. The loan proposals received are placed before the said committee and accordingly the committee

used to take appropriate decision with regard to the said proposals. The committee used to verify the papers submitted alongwith the proposal by the borrower and there is no question of verifying the identity of the borrower or that the borrower is required to attend the said meeting. Learned counsel submits that thus the courts below have correctly issued process against said Prafulla Khivasara and Abhaykumar Gandhi, who stood as guarantors to the said loan proposal.

6. I have also heard learned A.P.P. for the respondent-State.

7. It appears from the verification statement of the complainant as well as the investigation papers that the respondent-original accused Prakash Sohoni has simply recommended the case of the borrower Bebytai Gandhi on the basis of previous acquaintance with said Abhaykumar Champalal Gandhi. Furthermore, said Prakash Sohoni is not sanctioning authority and loan proposals are required to be cleared by the committee of said Patsanstha. I do not think that mere recommendation of proposal can only be the criteria to accept the loan proposal. The committee, after verification of documents submitted with the proposal, used to grant loan to the borrower. It is a matter of record that the committee had called monthly meeting on 30.8.2003 and in the said meeting, near about 8 urgent loan

proposals and 16 ordinary loan proposals were kept before the committee. After verifying the documents; such as, ration card, income tax returns, renewal licence, certified copy of the balance sheet, the loan proposal came to be sanctioned.

8. In view of above discussion, I do not find that any specific role is played by Prakash Sohoni so far as the allegations made in the complaint are concerned. I do not find any fault in the approach of the learned Magistrate. The learned Additional Sessions Judge has therefore, rightly dismissed the revision by confirming the order passed by the Magistrate. I do not find substance in the writ petition. Writ petition deserves to be dismissed and it is accordingly dismissed.

(V. K. JADHAV, J.)

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