**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.796 OF 2014

Ramchandra s/o Sambhu Chaudhary,
Age – 53 years, Occ. Agri. & Business,
R/o Ramkrushna Nagar, Taloda,
Tq. Taloda, Dist. Nandurbar ..PETITIONER
(Orig. Complainant)

VERSUS

1. Anil Champalal Kochar,
Age : 42 years, Occ. Service,
R/o The Shahada Peoples Co-operative
Bank Ltd., Taloda, Tq. Taloda,
Dist. Nandurbar

2. Shailesh s/o Shrishchandra Shroff,
Ager : 39 years,Occ. Service,
R/o Indira Mangal Karyalaya,
Near Yogeshwar Kirana Shop,
First Floor, Giri Vihar, Nandurbar,
Tq. & Dist. Nandurbar ..RESPONDENTS
(Orig. Accused Nos.3 & 4)

Mr A.G. Magare, Advocate for petitioner;
Mr C.R. Deshpande, Advocate for respondent no.1;
Mr R.S. Shinde, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 11th April, 2016

ORAL ORDER :

At the request of Mr Magare, learned Counsel appearing on behalf of the petitioner, the present writ petition is converted into revision under section 397 of the Code of Criminal Procedure, though the same is objected to by learned Counsel appearing on behalf of respondents, as the second revision at the behest of the other party than the one which has preferred earlier revision is tenable. Thus, the present proceedings is treated as revision.

2. Facts, as are necessary for decision of the present revision, are as under :-

The petitioner filed a complaint case against the present respondents, bearing Regular Criminal Case No.24 of 2006, for offences punishable under sections 408, 409, 420 read with section 34 of the Indian Penal Code, as according to him, respondent no.2 – accused no.4 Shailesh was working as a pigmy agent, with whom he had deposited certain amount from 1st June, 2004 to 24th May, 2005, to the tune of Rs.2,29,000/-, which was not paid to him upon maturity.

3. There is one more facet to the present proceedings, i.e. the petitioner had moved the Consumer Forum by way of a complaint seeking refund of the above referred amount, which came to be allowed by the order of the Consumer Forum, Nandurbar on 19th September, 2007, further confirmed up to National Consumer Disputes Redressal Commission against the respondents.

4. The criminal complaint was considered by the learned Magistrate and thereafter he ordered issuance of process against respondents – original accused nos.3 and 4, namely, the Accountant working in Shahada

Peoples Co-operative Bank Ltd., Taloda and Pigmy Agent, by an order dated 3rd November, 2008. The said order was questioned by respondent no.3 – Accountant before the learned Additional Sessions Judge, Shahada vide Criminal Revision No.31 of 2008. The said revision came to be allowed by an order dated 23rd January, 2014. Thus, the present revision by the original complainant.

5. Mr Magare, learned Counsel appearing on behalf of the petitioner-complainant would submit that, leave apart the non-compliance of the orders passed by the Consumer Forum till date, the fact remains that complaint depicts that particular roles are attributed to the present respondents – accused nos.3 and 4 in commission of the crime in question. According to him, the learned Magistrate, having regard to the contents of the complaint and the evidence brought before him has ordered issuance of process. The said order is upset by the learned Sessions Judge by exceeding his revisional jurisdiction, by quashing the order of issuance of process against accused no.3 Anil, who was working as an accountant. Mr Magare then would urge that perusal of the reasons as are furnished by the revisional court in the order impugned would depict that it has shifted entire burden on the petitioner and by blaming him for certain defaults, accused no.3 came to be discharged and the order of issuance of process against him came to be set aside.

6. Mr Deshpande, learned Counsel appearing on behalf of respondent no.1, while supporting the order of the first revisional court would submit

that the learned revisional court has rightly appreciated the procedure as is adopted while accepting the deposits through a pigmy agent. During the course of hearing, he has tried to shift entire burden on the pigmy agent, i.e. accused no.4 and then would urge that it is the accused no.4 who is solely responsible for the act in question and who has acted in connivance with the complainant to defraud the Bank. He would then submit that this Court should reject the present revision.

7. Having bestowed my thoughts to the submissions made and having perused the orders as are placed on record, it is required to be noted that the Consumer Forum has already given a verdict against the respondents, as is apparent from the order dated 19th September, 2007 and the fact that the said order has attained finality up to the National Consumer Disputes Redressal Commission is also not in dispute.

8. Though Mr Deshpande has invited my attention to certain submissions recorded by State Consumer Disputes Redressal Commission in regard to the alleged claim of conspiracy between the petitioner and accused no.4 pigmy agent, still the fact remains that if the pigmy agent was at fault or has committed any crime, it was always open for the present respondents to proceed against such pigmy agent, i.e. accused no.4 for the defaults as alleged. However, whatever steps as were required to be taken against accused persons were duly taken by the present petitioner by taking recourse to the proceedings under the Consumers Protection Act, as also the proceedings under the Indian Penal Code and Code of

Criminal Procedure as were available to him. By shifting the blame on original accused no.4, the other accused cannot seek discharge from the present proceedings, particularly when the mode, manner and object with which the scheme of pigmy agents, who act as a collection agent on behalf of the Bank in question, is implemented. Perusal of the order passed by the learned Sessions Judge depicts that he has shifted entire burden on the present petitioner and has blamed him for being non-diligent or failure to act diligently in the matter. The said observations, in my opinion, are completely in contravention to the very scheme under which the Bank has appointed pigmy agents for collecting amounts of deposit. It is also required to be noted that the deposits from the consumers are collected through appropriate procedure with the help of electronics gadgets which contain detail data and the same is available for the concerned Bank for its verification, which appears to be *prima facie* responsibility of respondents - accused. All these aspects, in my opinion, are required to be gone into, particularly while ascertaining whether accused no.3 has played any role in the matter or not and whether there is a *mens rea* for commission of crime in question. Merely by blaming the complainant, accused no.3 – accountant is discharged from the proceedings, which in my opinion, is not substantiated or supported by any legal reasons or any documentary evidence to that effect.

9. As a consequence of above, the order passed by the revisional court is not sustainable and deserves to be set aside. In the result, I pass following order :-

The order dated 23rd January, 2014, passed by Additional Sessions Judge, Shahada, in Criminal Revision Application No.31 of 2008, is quashed and set aside.

The order dated 3rd November, 2008, passed by Judicial Magistrate First Class, Taloda, below Exh.1, in Regular Criminal Case No.24 of 2006 ordering issuance of process against respondent no.1 – accused no.3 stands restored and confirmed.

The observations made herein above are *prima facie* and restricted only to the extent of order of issuance of process.

Criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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