

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 295 OF 2002

National Diary Development Board ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. D.T. Kharmate with Ms. Vrishali Raje a/w. Mr. Rahul Kharmate,
Advocate for the petitioner.
Mr. S.R. Agarkar, APP for the respondent/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **9th December, 2016**

P.C.:

Leave to amend the date in the prayer. Amendment to be carried out forthwith.

2. This Writ Petition is preferred under the jurisdiction of Article 227 of the Constitution of India with a prayer that the order of issuance of process dated 16th May, 2001 passed by the learned Metropolitan Magistrate, 8th Court, Esplanade Mumbai in Criminal Case No. 24-S-2001 be quashed and set aside.

3. The learned Magistrate has issued process against the petitioner under sections 406, 407, 418, 420, 465, 467, 468, 471 r/w. 120B of Indian Penal Code. The petitioner is shown as accused no. 7 in the original complaint. One Oman International Bank S.A.O.G. is the original

complainant and one Maruti Marketing Ltd. is accused no. 1 in the original complaint. There are 11 accused in the said complaint. Accused nos. 10 and 11 have imported 2000 metric ton edible oil and they stored the edible oil in the tanker belonged to the petitioner-National Dairy Development Board, who is accused no. 7 in the complaint. Petitioner no. 7 is a body constituted by Special Act of Parliament and they used to hire such tanks for storage of edible oil if it is asked for. Accused no. 1-Maruti Marketing Ltd. has purchased the said oil from accused nos. 10 and 11 for which accused no. 1 obtained loan of Rs.11 crores from the complainant bank. Accordingly, the agreement was entered into between the complainant bank and accused no. 1, for which edible oil is pledged. Accused no. 1 had assured the bank that the oil is secured. The said amount of Rs.11 crores was advanced, however, after sometime the bank officials on inspection noticed that no edible oil was found in the tanks owned by the petitioner. No loan amount was paid by accused no. 1 to the complainant bank and the bank was duped for an amount of Rs.11 crores plus interest. So the bank filed criminal case against accused no. 1-Maruti Marketing Pvt. Ltd., other accused and also against the petitioner for forgery, criminal breach of trust, conspiracy and cheating. The process accordingly was issued against all the accused. Hence, this Petition is filed.

4. The learned counsel for the petitioner has submitted that the bank

has filed Civil Suit No. 5616 of 1998 before this Court wherein the petitioner was made respondent no. 6. The said civil suit was subsequently transferred before DRT-II, Mumbai and the suit was numbered as O.A. 734/2001. It was concluded on 26th May, 2004 in which the petitioner/original accused no. 6 was absolved from all the liabilities. The learned counsel relied on the relevant portions in the said judgment dated 26th May, 2004 passed by the Presiding Officer, DRT, Mumbai. He submitted that there was no agreement between the bank and the present petitioner. Hence, there was no monetary liability cast on the petitioner. He further pointed out the letter dated 9th February, 1988 written by the original complainant to the petitioner wherein it was mentioned that they have authorized one Lalbhai Trading Co., Gandhidham to take delivery of 2000 metric ton edible oil which was stored by accused nos. 10 and 11 from tank No.309 owned by the present petitioner and it was specifically informed that the present petitioner should not deliver the said edible oil to original accused nos. 10 and 11. T A tank owned by the present petitioner was used only for the purpose of storage of edible oil. Hence, there is no case against the petitioner/accused no. 7.

5. Learned APP submits to the order of the Court.

6. None present for the original complainant, who is respondent no. 2 in this petition. Mr. Punalekar is absent though twice the matter was fixed on board and time was granted to him.

7. Perused the judgment in DRT proceedings wherein the petitioner is absolved from all the liabilities by DRT. The DRT after considering the documents, has arrived at the conclusion that no wrong or breach of obligation in delivering the oil is done by defendant no.6/petitioner. It has also taken into account the letter dated 9th February, 1998. I also consider the submissions of learned counsel for the petitioner and the facts which are transpired in the original complaint. In view of this, the order of issuance of process is set aside and quashed. Rule is made absolute in terms of prayer clause (b).

(MRIDULA BHATKAR, J.)