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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.91 OF 2016  
IN  
CRIMINAL WRIT PETITION NO.3933 OF 2012**

Taramati Sadanand Pathak

Age: 67 years, Occup: Educator/HRD Consultant,

R/at C 14 Greenpark Apts,

Salisbury Park,

Pune – 411 037.

...Applicant

Versus

1. Bank of India  
Z.O. 1162, Shivajinagar,  
Near Observatory,  
Ganeshkhind,  
Pune – 411 005
2. M.Kumar (Employee of bank)
3. P.Barve (Employee of bank – suspended)
4. Mr.Pandit (Employee of bank)
5. Mr.Upadhyaya (Employee of bank)
6. State of Maharashtra ...Respondents

Ms.Taramati Sadanand Pathak, Applicant in person.

Mr.Anand Pai a/w Mr.Aniket Mokashi i/b Haresh Mehta & Co., for  
Respondent No.1.

Mr.Neel Helekar, for Respondent Nos.2 and 4.

Ms.Pallavi Dabholkar, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.***

***RESERVED ON : 16<sup>th</sup> SEPTEMBER, 2016***

***PRONOUNCED ON : 24<sup>th</sup> OCTOBER, 2016***

**ORDER :**

1. Heard Ms.Taramati Pathak, the Applicant who appears in person, learned counsel for the respondent no.1 and the learned APP.
2. By this application, the applicant seeks the following prayers:-
  - a) The Records of Criminal WP 3933/2012 be kindly perused;
  - b) Consent be kindly given to the lower court, to issue show cause notice to discharged accused, directing enquiry, as per law, to facilitate their arraignment, and be tried with accused No.3;
  - c) That this trial be expedited, in view of the ailing applicant's age and health, having undergone surgeries, even on head, affecting memory;

- d) Any other orders deemed fit and fair, be kindly passed, to render justice to the ailing lady Senior citizen, defrauded since 2007 of her legal funds.”

3. According to Ms.Pathak, the applicant who appears in person, she has come across some new material (documents) after the respondent nos.1, 2 and 4 were discharged from the said case. She urged that the said new documents are incriminating and throw light on the complicity of the discharged respondents. She submitted that the said documents were suppressed by the respondent no.1 – bank, when respondent nos.1, 2 and 4 were discharged by this Court. She urged that as there was suppression of vital documents, the Judgment and Order of this Court discharging the respondent no.1 – bank and respondent nos.2 and 4, as well as the order of the Apex Court, dismissing the SLP, preferred by the applicant, are a nullity. She submitted that in her re-examination certain new documents have come on record, which will show the fraud committed on the Court, by the discharged respondents. She relied on the Constitution Bench Judgment of the Apex Court in the case of ***Hardeep Singh v/s State of Punjab and Others***<sup>1</sup> in support of her submission. According to her, this

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1 (2014) 3 SCC 92

Court under Section 398 r/w Section 300(5) of the Code of Criminal Procedure can order an enquiry into the fraud committed by the discharged respondents, so that they are arraigned as accused alongwith the respondent no.3 - Pramod Barve. The applicant placed reliance on certain documents which are annexed to the application and 3 documents which were tendered by her, during the course of arguments on 16<sup>th</sup> September, 2016. The applicant submitted that she has been re-examined by the trial Court and that she has also filed an application under Section 319, which is pending adjudication before the trial Court. According to her, although the said application is pending before the trial Court, an enquiry under Section 398 r/w 300(5) of Code of Criminal Procedure can only be ordered by this Court which discharged the respondents and not by the trial Court.

4. Mr.Anand Pai, learned counsel for the respondent no.1-bank opposed the application. He submitted that the application filed by the applicant in this Court is completely misconceived. He submitted that respondent no.1-bank alongwith respondent nos.2 and 4 were discharged by the learned Additional Chief Judicial Magistrate, Pune in Regular Criminal Complaint No.5281 of 2009 vide Judgment and Order dated 17<sup>th</sup> December,

2011. He submitted that against the said order discharging the respondent nos.1, 2 and 4, the applicant herein, filed a Revision Application, being Criminal Revision Application No.92 of 2012, in the Sessions Court and the learned Additional Sessions Judge, Pune, vide Judgment and Order dated 9<sup>th</sup> October, 2012, was pleased to dismiss the said Revision Application. He further submitted that being aggrieved and dissatisfied with the said orders, the applicant filed a writ petition in this Court, being Criminal Writ Petition No.3933 of 2012 and that this Court (Coram:U.V.Bakre,J.), after hearing the parties was pleased to dismiss the said Writ Petition and as such the orders discharging the Respondent Nos.1, 2 and 4 were confirmed. He submitted that thereafter, the applicant moved the Apex Court challenging all the said orders, however, the SLP was also dismissed. According to the learned counsel, none of the documents produced by the applicant, in anyway, show the complicity of the discharged respondents. He submitted that the applicant although has urged before this Court that she was re-examined by the trial Court, no document showing her re-examination has been placed on record.

5. Perused the papers. The aforesaid application is filed in a

disposed of Writ Petition. It is not in dispute that the applicant had filed a private complaint in the Court of Additional Chief Judicial Magistrate, Pune, as against the respondents in 2008, alleging offences punishable under Sections 403, 406, 420, 504 r/w 120B of the Indian Penal Code. The learned Additional Chief Judicial Magistrate, Pune, was pleased to issue directions under Section 156(3) of the Code of Criminal Procedure vide order dated 1<sup>st</sup> August, 2008, after recording the verification of the applicant. After investigation, the police submitted a report dated 22<sup>nd</sup> June, 2009, before the trial Court. Pursuant thereto, C.R.No.453 of 2007 was registered with the Vishrambaug Police Station, Pune, as against Pramod Barve, respondent no.3 herein, an employee of the respondent no.1 – Bank of India, alleging offences under Sections 409, 420, 465, 467, 468, 471, 473, 511 of the Indian Penal Code. Respondent no.3 was thereafter arrested and charge-sheet was filed against him. It appears that in 2009 after recording the evidence of the applicant (original complainant), the learned Magistrate issued process against the respondent nos.1, 2 and 4, for the alleged offences punishable under Sections 403, 406, 420, 504, r/w 120B of the Indian Penal Code. The evidence of the applicant (original complainant) recorded by the trial Court was treated as evidence before charge. The

examination-in-chief of the applicant was recorded in 2011 and the applicant (original complainant) was thereafter cross-examined.

6. After recording the evidence before charge and after hearing the parties, the learned Additional Chief Judicial Magistrate, Pune was pleased to discharge respondent nos.1, 2 and 4 from the said case, vide Judgment and Order dated 17<sup>th</sup> December, 2011, passed in Regular Criminal Complaint No.5281 of 2009. The learned Magistrate, however, directed that the case could proceed against respondent no.3. The said order discharging the respondent nos.1, 2 and 4 was challenged by the applicant before the Sessions Court in Criminal Revision Application No.92 of 2012. The learned Additional Sessions Judge, Pune, vide Judgment and order dated 9<sup>th</sup> October, 2012 dismissed the said Revision Application preferred by the applicant by observing, that the complainant (applicant) had failed to show the involvement of respondent nos.1, 2 and 4 by satisfactory evidence on record. The aforesaid orders were challenged by the applicant in writ petition, being Criminal Writ Petition No.3933 of 2012. This Court (Coram:U.V.Bakre,J.) vide Judgment and Order dated 15<sup>th</sup> October, 2013, was pleased to dismiss the said Writ Petition by a reasoned order. Against

the aforesaid orders, the applicant preferred an SLP, which was also dismissed by the Apex Court. According to the applicant, she was re-examined by the trial Court and that her application filed under Section 319 of the Code of Criminal Procedure, is pending adjudication before the trial Court. However, the said documents pertaining to her re-examination nor the application filed by the applicant, under Section 319 in the trial Court have been placed on record or produced by the applicant before me during the hearing of this application. According to the applicant, it was not necessary for her to place the said documents on record, as she had filed the aforesaid application under Section 398 r/w 300(5) of Code of Criminal Procedure Code, calling for an enquiry. According to her, the power to order an enquiry under Section 398 r/w 300(5) vests only with the High Court. The documents on which reliance is placed are on page nos.6, 8, 9A, 9B of the application and 3 documents which were tendered across the bar on 16<sup>th</sup> September, 2016. Documents which are on pages nos.6 and 8 are letters addressed by respondent no.3 – Pramod Barve to the applicant and respondent no.3 – Barve to the Respondent No.1 - Bank of India respectively. There is nothing in the said letters to show the complicity of the respondent nos.1, 2 and 4 in the case. Infact, the respondent no.3 –

Barve against whom prosecution is pending before the trial Court, has in the letters, which are on pages nos.6 and 8 admitted his own responsibility and has confessed that he had used the fixed deposit amount given to him, by the Customer Ms.T.S.Pathak (applicant) and her family for his urgent family needs. The document on page nos.9A and 9B also do not in anyway show the complicity of the respondent Nos.1, 2 and 4 warranting an enquiry. Similarly, the documents which were tendered on 16<sup>th</sup> September, 2016 are documents which will have to be proved by the applicant in trial. The said documents *prima-facie*, do not show the complicity of the respondent nos.1, 2 and 4. On the basis of the said documents, as on today, no direction is warranted. There must be some *prima-facie* material to direct an enquiry. Reliance placed on the Judgment of the Apex Court in the case of **Hardeep Singh (supra)**, for ordering an enquiry under Section 398 r/w 300(5) of Cr.P.C., is misplaced and misconceived in the facts of this case. No ground is made out to grant any reliefs as sought for in the application.

7. The Application is rejected and disposed of as such.

8. The trial Court shall conduct the case, on its own merits, in accordance with law. The trial is expedited.
9. All concerned to act on the authenticated copy of this order.

**REVATI MOHITE DERE, J.**