Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2623 OF 2014

Narayan Ramchandra Patil	]	
Age – 65 years, Occ.: CEO,	]	
Sangli District Primary Teachers	]	
Co-operative Bank Ltd., Sangli.	]	…. Petitioner
Versus		
1. Babasaheb Mahadeo Patil	]	
Aged – 66 years, Occu.: Retired,	]	
R/of Dr. Pattabardhan Building,	]	
North Shivaji Nagar, Sangli.	]	
	]	
2. State of Maharashtra	]	…. Respondents

ALONG WITH

CRIMINAL WRIT PETITION NO.3236 OF 2014

1. Hambirrao Manikrao Pawar	]	
Age 35 years, Occu. Service	]	
	]	
2. Suryakant Yashwant Patil	]	
Age Major, Occu. Service	]	
	]	
3. Ramchandra Bapu Khot	]	
Age Major, Occu. Service	]	
	]	
4. Dagadu Lala Yevale	]	
Age Major, Occu. Service	]	
	]	
5. Tanaji Baburao Jadhav	]	
Age Major, Occu. Service	]	
	]	
6. Rajkumar Chintu Patil	]	
Age Major, Occu. Service	]	
	]	
7. Jagdish Sakharam Nalawade	]	
Age Major, Occu. Service	]	

8. Tanaji Tukaram Jedage]
Age Major, Occu. Service]
]
9. Vikas Lalaso Shinde]
Age Major, Occu. Service]
]
10. Mahadeo Bhagwan Tavdar]
Age Major, Occu. Retired]
]
All Office bearers of c/o. Sangli District]
Primary Teachers Co-operative Bank Ltd.,]
Sangli, Mahavir Nagar, Sangli.] …. Petitioners

Versus

1. Babasaheb Mahadeo Patil]
Aged – 66 years, Occu.: Retired,]
R/of Dr. Pattabardhan Building,]
North Shivaji Nagar, Sangli.]
]
2. State of Maharashtra] …. Respondents

AND

CRIMINAL WRIT PETITION NO.3235 OF 2014

1. Shrikant Sitaram Mali]
Age 42 years, Occu. Service]
R/of Madgyal, Tal. Jath, Dist. Sangli.]
]
2. Prataprao Parsharam Pawar]
Age 55 years, Occu. Service]
R/at Post Vita, Tal. Khanapur, Dist. Sangli.]
]
3. Kisanrao Shankarrao Patil]
Age 52 years, Occu. Service]
R/of At Post Kapuskhed]
Tal. Walva, Dist. Sangli.]
]
4. Sayajirao Raghunath Patil]
Age 42 years, Occu. Service]
R/of At Post Shigaon, Tal. Walva, Dist. Sangli.]
]
5. Prakash Krishan Vibhute]
Age 41 years, Occu. Service]

R/of At Post Kavathe-Mahankal,]
Tal. Kavathe Mahankal, Dist. Sangli.]
]
6. Dyandeo Sukhdeo Bhosle]
At Post Mahuli, Tal. Khanapure, Dist.Sangli.] …. Petitioners

Versus

1. Babasaheb Mahadeo Patil]
Aged – 66 years, Occu.: Retired,]
R/of Dr. Pattabardhan Building,]
North Shivaji Nagar, Sangli.]
]
2. State of Maharashtra] …. Respondents

Mr. Umesh Mankapure for the Petitioners.

Mr. Anilkumar K. Patil for Respondent No.1.

Mrs. A.S. Pai, A.P.P., for Respondent No.2-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 22ND FEBRUARY 2016.

PRONOUNCED ON : 7TH MARCH 2016.

JUDGMENT :

1. Rule. Rule is made returnable forthwith, by consent. Heard learned counsel for the parties.

2. As all these three Writ Petitions take an exception to the Judgment and Order dated 28th March 2014 passed by the Sessions Judge, Sangli, in Criminal Revision Petition No.277 of 2010, Criminal Revision Petition No.278 of 2010 and Criminal Revision Petition No.2 of 2012, respectively, they are being decided by this common order. By the impugned Judgment

and Order, the learned Sessions Judge has confirmed the order passed by the Chief Judicial Magistrate, Sangli, on 14th December 2010 of issuing process against the Petitioners and other co-accused for the various offences punishable under Sections 406, 409, 463, 465, 468 and 472 r/w. 34 of IPC.

3. Brief facts of the Petitions are as follows :-

Respondent No.1 herein is the Original Complainant, who was working as Branch Manager at Sangli District Primary Teachers Co-operative Bank Limited. Some of the Petitioners are the Members of the Managing Committee, whereas, others are the office bearers of the said Bank. As per the Petitioners, while Respondent No.1 was working as Branch Manager at Ramanand Nagar Branch, he has committed misappropriation of huge amount of Rs.35,00,000/-. Hence, Criminal Case was filed against him, which is pending. Apart from that, recovery proceedings are also initiated by the Bank against Respondent No.1, wherein his movable and immovable properties have been attached. Arrest warrant has also been issued against Respondent No.1, since the amount in question has not been paid by him in spite of decrees. In view of the fraud committed by Respondent No.1, a Departmental Enquiry was also initiated against him; as a result of which, he stood dismissed from service.

4. It is the contention of the Petitioners that, since Bank has initiated these various proceedings against Respondent No.1 and has also dismissed him from service, Respondent No.1 has filed several vexatious litigations against the Bank and Members of its Managing Committee before various authorities and Courts, only with an intention to ensure that the Bank cannot prosecute legal remedies available with the Bank against Respondent No.1.

5. As per the Petitioners, the present complaint filed by Respondent No.1 before the Trial Court is one of such complaints. In the said complaint, which is registered as R.C.C. No.93 of 2008, Respondent No.1 has alleged that the Petitioners have committed misappropriation of the amount of Provident Fund, which was deducted from his account and from the accounts of other employees. It was stated in the complaint that, though the amount was deducted from the salary of Respondent No.1 and other employees, instead of depositing the said amount with the Provident Fund Authority, the Petitioners herein had kept the said amount in a separate account opened in the name of *"Sevak Kayam Thev"* and it was done without consent of the employees or of Respondent No.1. It was further his case that the amount of Rs.28,625/-, which was due to him towards the amount deducted by the Bank as his Provident Fund dues, is yet not deposited with the Provident Fund Authority and thus the

Petitioners herein, who are the Members of the Managing Committee of the Bank, have committed various offences of cheating and criminal breach of trust.

6. Respondent No.1 has filed this complaint against, in all, 27 persons and the Trial Court on the receipt of the complaint, sent it for investigation under Section 156(3) of Cr.P.C. After carrying out necessary investigation, P.I. of concerned Police Station filed a Report stating that no offence is made out against the Petitioners. The Trial Court, however, after recording the evidence of Respondent No.1, found that, though it was the liability of the Petitioners herein to deposit the amount of Provident Fund deducted from the salaries of the employees with the Provident Fund Authority, they have not done so. Instead, they deposited the said amount in a separate Bank Account opened in the name of *"Sevak Kayam Thev"*. Therefore, prima facie, the ingredients of the offences are made out. Accordingly, the Trial Court issued process against all the 27 Accused, the Petitioners herein, for the offences alleged against them.

7. Petitioners challenged this order before the Court of Sessions Judge, Sangli, by preferring Criminal Revision Petition No.277 of 2010, Criminal Revision Petition No.278 of 2010 and Criminal Revision Petition No.2 of 2012, which, however, came to be dismissed. Hence, Petitioners

have approached this Court for setting aside the order of the Trial Court and the Revisional Court and for quashing of process issued against the Petitioners.

8. It is urged by learned counsel for the Petitioners that Respondent No.1 has absolutely no locus standi to file the complaint, since the Provident Fund Authority can only take action against the Petitioners, if there is any violation or breach of rules. Secondly, it is submitted that, since the Bank in question has now deposited the entire amount with the Provident Fund Authority along with fine, there is no misappropriation, as alleged. Thirdly, it is submitted that, none of the Petitioners was the Member of the Managing Committee or taken any part in the passing of resolutions, when, at the relevant time, the amount was kept in the separate account in the Bank opened in the name of *"Sevak Kayam Thev"*. Moreover, not a single pai from the said amount is either misappropriated or siphoned off. In such situation, according to learned counsel for the Petitioners, there was absolutely no material before the Trial Court for issuance of process against them. In his opinion, both the Courts have missed the point that the complaint was filed by Respondent No.1, only as a counter-blast to various proceedings have been initiated against him by the Bank, with an intention to harass the Petitioners and hence the Trial Court should not have taken cognizance of such

complaint. According to learned counsel for the Petitioners, this is a fit case where process issued against the Petitioners is required to be quashed, as it is an abuse of the process of the Court.

9. Per contra, learned counsel for Respondent No.1 has supported the order of issue process by pointing out to the admitted fact that the amount, which was deducted from the salaries of the employees towards their dues of Provident Fund, was not deposited with the Provident Fund Authority and hence, according to him, the Managing Committee of the Bank has committed criminal breach of the trust. The Bank is already held liable to pay the fine imposed by the Provident Fund Authority, which proves the fact that the Bank and its Managing Committee has committed the offence of criminal breach of trust and the breach of legal provisions. Therefore, according to learned counsel for Respondent No.1, at the threshold itself, when the rowing inquiry or mini-trial is not warranted and the ingredients of the offence are prima facie made out, the process issued against the Petitioners cannot be quashed.

10. As per the undisputed facts on record in this case, the Managing Committee of the Bank has deducted the dues of the employees towards their Provident Fund. However, instead of depositing the same with the Provident Fund Authority, these dues were kept in a separate Bank Account opened in the name of *“Sevak Provident Fund”*. Subsequent

thereto, the amount was withdrawn from the Account of the *“Sevak Provident Fund”* and kept in another Account in the name of *“Sevak Kayam Thev”*. Admittedly, it was not done with the permission or consent of the employees. Thus, as, admittedly, the amount was towards the dues of the Provident Fund of the employees, it should have been deposited directly with the Provident Fund Authority and at-least it should not have been withdrawn from the Account of *“Sevak Provident Fund”* and transferred to the *“Sevak Kayam Thev”*, without the consent or permission of the employees. It may be true that the Managing Committee of the Bank has not misappropriated the said amount in the strict sense of the term, but the fact remains that they have, prima facie, committed the criminal breach of the trust, as the amount which was deducted from the salaries of the employees for a particular purpose towards the dues of their Provident Fund was not used for the said purpose, but it was kept in a different account.

11. It is pertinent to note that, when this fact was brought to the notice of the Provident Fund Authority, they have conducted the inquiry. The Report of the Auditor to that effect is also filed on record and in view of the findings arrived at in the said inquiry, the Bank was directed to not only deposit the entire amount with the Provident Fund Authority, but a fine of Rs.23,92,864/- was also imposed on the Bank. Hence, prima facie, a case

is made out against the Petitioners on perusal of averments made in the complaint. As per learned counsel for the Petitioners, the Petitioners had acted on the advise of the Chartered Accountant and there was no intention either to commit the breach of the trust or even to misappropriate the amount. They have also deposited the fine amount and the entire dues recovered from the employees with the Provident Fund Authority. Thus, according to learned counsel for the Petitioners, whatever irregularities happened in the instant case, they were on the bonafide belief and without any criminal intent or mens rea. That is why the Provident Fund Authority has not initiated any criminal action against the Petitioners or the Bank, except for imposing the fine amount of Rs.23,92,864/-, which is already paid. In the opinion of learned counsel for the Petitioners, therefore, the ingredients of the offence of either cheating or criminal breach of the trust are not made out.

12. In the considered opinion of this Court, prima facie, in view of the concurrent findings of the Trial Court and the Revisional Court, this Court cannot enter into the aspect as to what was the intention of the Petitioners?, whether the acts committed by the Petitioners were only in the nature of irregularities or illegalities?, as these are all disputed questions of facts. At the stage of deciding the question whether process issued against the Petitioners in its writ jurisdiction is to be quashed or is

just, legal and correct, this Court cannot enter into the disputed questions of facts.

13. Prima facie, however, there is a case that the amount which was recovered from the employees towards their provident fund dues was not deposited in time with the Provident Fund Authority and, therefore, the Provident Fund Authority has also imposed the fine amount of Rs.23,92,864/- on the Bank and as per the allegations made by Respondent No.1, the Managing Committee of the Bank has recovered this amount of fine from the salaries of the employees, particularly, as regards the present Respondent No.1, he has specifically alleged that the amount of Rs.28,782/- was deducted from the amount due to him and that too without his consent. He was also not paid the amount of interest of Rs.2,12,057/-, which he was entitled to as interest on the said amount. Therefore, it cannot be said that prima facie ingredients of the offence of the criminal breach of the trust are not made out.

14. As regards the contention that, at the relevant time, when the amount deducted from the salaries of employees was deposited in the separate Bank Account, the Petitioners were not the office bearers or the Members of the Managing Committee, the least that can be said is that it is again a disputed question of fact. According to Respondent No.1-Complainant, as stated in Para No.2 of his complaint, they were very

much in-charge of the Management Committee of the Bank and they have passed the resolutions to that effect from time to time. No unimpeachable and uncontrovertable evidence is produced on record by the Petitioners to show that, at the relevant time, they were not in-charge of the Management Committee. In such situation, that question is also required to be left to be decided at the time of trial.

15. To sum up, therefore, as on bare perusal of the complaint, ingredients of the offences alleged against the Petitioners are, prima facie, made out, the impugned order passed by the Trial Court of issuing of process against the Petitioners, which order is also confirmed by the Revisional Court, cannot be called as illegal or perverse so as to warrant interference therein. As there is no jurisdictional error apparent on the face of the record, these Writ Petitions stand dismissed. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]