

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 4585 OF 2014

Shivaji Narsu Shirsat

.....Petitioner

V/s.

The Wai Urban Co-op Bank Ltd and Ors

....Respondents

Mr. Vishwath Talkute Advocate for Petitioner.

Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 28, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein happens to be original complainant in Criminal Case No. 383 of 2007 pending before Judicial Magistrate First Class at Karad. On 02/11/2007, Petitioner filed a complaint in the said Court against the Respondent Bank and the Office Bearers of the bank including Branch Manager, Clerks and other staff alleging therein that he had taken a loan from the Respondent Bank for his business of transport. That he also holds savings account in the Respondent Bank. It is submitted that on 12/08/2003 he had written a letter to the accused no. 2 contending that the amount of Rs.

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1,55,926 which he has earned from the sale of shares, be remitted to loan account. He had issued a cheque dated 13/08/2003. At that time, all the accused were present in the bank. That on 28/08/2003 cheque was honoured and the amount of Rs. 1,55,958/- was withdrawn from savings account no. 246, however, the same was not remitted in his loan account. That he had persuaded the bank on several occasions. He had faith in the bank and therefore did not take any action. It is lastly contended that the bank and its officers have misappropriated the amount of Rs. 1,55,959/-.

4) Learned Magistrate had initially passed an order under section 156 (3) of Code of Criminal Procedure, 1973. Investigating Officer had filed a negative report and it was mentioned that the said amount is deposited in account nos. 31, 37, 39 & 40. Learned Magistrate had also considered that accused bank had filed a complaint against the Petitioner under section 138 of Negotiable Instruments Act. Learned Magistrate had recorded statements of the witnesses. It appears that the amount was not deposited in the loan accounts till 31/03/2004 and therefore, the vehicles of the accused were seized in March 2004. Learned Magistrate had considered that the amount was adjusted and the adjustment was not on record and therefore, learned

Magistrate was of the opinion that no case for offence punishable under section 409 of Indian Penal Code is made out, however, accused deserves to be prosecuted for offence punishable under section 420 of Indian Penal Code and hence, by an order dated 13/03/2008, process was issued against the respondents for offence punishable under section 420 of Indian Penal Code,

5) Being aggrieved by the said order, Petitioner had filed Revision Application under section 397 of Code of Criminal Procedure, 1973 seeking relief of quashing of the order thereby denying to prosecute the Respondent under section 409 of Indian Penal Code. Learned Revisional Court had considered the Judgments in the connected matters. Revisional Court has also considered the fact that Respondents had filed a complaint against the Petitioner under section 138 of Negotiable Instruments Act and the Petitioner was convicted therein as per the Judgment and Order dated 31/10/2006 and was awarded a sentence of rigorous imprisonment of 4 months and fine of Rs. 26,88,982/-.

6) It is a matter of record that cheque of Rs. 1,55,958/- was dated 28/07/2003. The communication was made by the Petitioner was dated 13/08/2003. Complaint is filed in the year 2007 i.e. only after the Petitioner

was convicted for offence punishable under section 138 of Negotiable Instruments Act vide Judgment and Order dated 31/10/2006.

7) In fact, in the proceeding under section 138 of Negotiable Instruments Act, Petitioner had raised the defence that the cheque was not deposited by the bank in the particular account. The said defence was not accepted as the accused has not stated so before the Court.

8) Learned counsel for the Petitioner, at this stage submits that in fact, Petitioner was acquitted in appeal vide Judgment and Order dated 30/06/202. Learned counsel submits that Revisional Court has not taken into consideration the said fact, however, it is a matter of record that the said Judgment was never brought to the notice of the Revisional Court and therefore, Revisional Court was constrained to rely upon the Judgment of the Trial Court.

9) However, taking into consideration the fact that the transaction was of the year 2003 and the complaint is filed in the year 2007, only after the Trial Court had convicted him under section 138 of Negotiable Instruments Act, it would be apt to consider that the said complaint was filed only in retaliation. The acquittal of the Petitioner is a subsequent event and process was issued

on 13/03/2008. Upon perusal of the order passed by the learned Magistrate, it is clear that there has been application of Judicial mind and therefore, learned Magistrate has issued process under section 420 of Indian Penal Code. This petition is of the year 2014. Proceedings were not stayed. Learned Magistrate must have conclude the proceedings. In case proceedings are not concluded, learned Magistrate shall proceed with the matter in accordance with Law, forthwith. Hence, following order.

- (i) Writ petition, being sans merits, stands dismissed.
- (ii) Rule is discharged.
- (iii) Office to communicate this order to the concerned Court, forthwith.

(SMT. SADHANA S. JADHAV, J.)