IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.548/2015

Purushottam s/o Trimbak Vyas
..Versus..
Shri Atul Bhailal Ganatra and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATE : 18.4.2016

Heard Shri Shivkumar Dwivedi, Advocate for the petitioner, Shri S.P. Dharmadhikari, Senior Advocate assisted by Shri C.S. Dharmadhikari, Advocate for the respondent Nos.1 to 18, Shri U.J. Deshpande, Advocate for the respondent No.20 and Shri S.B. Bissa, A.P.P. for the respondent No.21. None appears for the respondent No.18 though served.

The petitioner has filed an application against the respondent Nos.1 to 20 before the Magistrate praying that directions be issued for investigation on the complaint of the petitioner, as per Section 156(3) of the Code of Criminal Procedure. The petitioner alleges that there is misappropriation of huge amount by the officers of the bank and the respondent Nos.1 to 20 are also involved in it.

According to the respondent Nos.1 to 18, who were Directors of the bank, they are not concerned with any misappropriation as alleged by the petitioner. The learned Senior

Advocate has pointed out from the enquiry report given by the Divisional Joint Registrar, Co-operative Societies (Audit), the findings that the applications for loan were assessed, proposed and sanctioned by the then General Manager/Chief Executive Officer, that the sanction of loan was not ratified by the Board of Directors and loans were granted without proper authority and without knowledge of Board of Directors and the sanction was not signed by Chairman or Vice-Chairman of the bank and was not ratified by the Board of Directors. It is pointed out from the conclusions under the heading "Fraud under Bank Re-conciliation" of the report that the entries in the account were engineered in such a manner that it was not possible even for the Auditors to detect the fraud and all this was at the level of officials of the bank and without knowledge of the Directors.

The learned Magistrate refused to direct the investigation as per Section 156(3) of the Criminal Procedure Code, by the following order:

> *"Perused the application and documents. Heard the applicant in person. On perusal of complaint it appears that there are allegations against all the non-applicant in respect of fraud and misrepresentation. However application has not specifically pleaded/mentioned of role of each of the non-applicant. The dispute pertains to co-operate society Act. The complaint in his application has given the examples of fraud. However the complaint has not mentioned also how & in what matter and by whom the offence has be committed. The complaint is vague in nature. Therefore, I am not inclined to allow the application. In result I pass the following order.*
>
> *ORDER*
>
> *Application is rejected."*

The enquiry report submitted by the Divisional Joint Registrar, Co-operative Societies (Audit) deals with every relevant aspect and the conclusions are as follows:

> *"To conclude the fraud reported in the Akola urban Co.op. Bank Ltd. as described in the above six broad categories it is observed that heavy amount of fraud was committed by officers of the Bank. There was a well planned strategy to defraud the Bank and continued for a long period of 14 years without knowledge of top management statutory auditors and RBI inspectors due to fact that there was no internal audit and internal control in the Bank since many years together, checking system of Bank Reconciliation statement was not being closely monitored during the period of fraud. The reconciliation department was not subject to external overview, concurrent audit was not conducted as there was no mechanism of external oversight and mainly there was no transfer policy for employees of the bank upto 2013. It is observed that the officers responsible for fraud were posted so many years in the same post and therefore it become easy for them to commit the fraud and to continue and conceal the same for many years together."*

In my view, considering the nature of accusations made by the petitioner - applicant and the material which is placed on the record it is necessary that the learned Magistrate should apply his mind to all the relevant aspects. Though it is not clear as to whether the report submitted by the Divisional Joint Registrar, Co-operative Societies (Audit) was on the record before the learned Magistrate when he passed the impugned order, in my view, it being a report submitted by the statutory Authority and dealing with the issues raised by the petitioner - applicant, it will have to be considered by the learned Magistrate specially when the Chief Executive Officer is also impleaded in the application filed by the petitioner before the learned Magistrate.

The Sessions Court should not have dealt with the merits of the matter exercising its revisional jurisdiction under Section 397 of the Code of Criminal Procedure, looking to the fact that the order passed by the learned Magistrate is cryptic and it has not taken into consideration all the relevant aspects, the learned Additional Sessions Judge should have remitted the matter to the Magistrate for re-consideration.

As I propose to remit the matter to the learned Magistrate for fresh consideration, I refrain myself from adverting to the merits of the matter.

Hence, the following order:

(i) The impugned orders are set aside.

(ii) The matter is remitted to the learned Magistrate for re-consideration, according to law.

(iii) The learned Magistrate shall take into consideration all the material that is placed on the record.

The learned Magistrate shall permit the applicant to place on the record any further material, if the petitioner - applicant wants.

(iv) The learned Magistrate shall also hear the respondent Nos.1 to 20.

(v) The petitioner - applicant and the respondent Nos.1 to 18 and 20 shall appear before the learned Magistrate on 10th June, 2016 at 11 a.m.

The notice of the proceedings shall be served on the respondent No.19.

(vi) The learned Magistrate shall endeavour to dispose of the application filed by the applicant till 10th January, 2017.

CRIMINAL APPLICATION (APPW) NOS.49/2016 & 113/2015.

In view disposal of main application, these applications do not survive and are **disposed of** accordingly.

JUDGE

Tambaskar.