

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 331 OF 2006

1. The Mahanagar Co-operative Bank Ltd.,
(A Scheduled Bank)
Head Office at Lalbag, Mumbai-12.
Branch Office at market Yard,
Ahmednagar, Tq. & Dist. Ahmednagar.
Through it's Senior Branch Manager
at Ahmednagar.
2. Eknath s/o. Vitthal Kale,
Age 50 years, Occu. Service as
Managing Director of the
petitioner No. 1 Bank at Mumbai.
R/o. Flat No. A-603, Ameya R.B.I.
Employees Co-operative Housing
Society, 7th Floor, New Prabhadevi
Road, Prabha Devi, Mumbai-25.
3. Gaulabrao Sakharam Shelke,
Age 50 years, Occu. Solicitor &
Chairman of the petitioner No. 1
at Mumbai,
R/o. Flat No. A-603, Ameya R.B.I.
Employees Co-operative Housing
Society, 7th Floor, New Prabadevi
Road, Prabha Devi, Mumbai-25.
4. Shantaram Bapu Kalaskar,
Age 49 years, Occu. Service as
Senior Branch Manager of the
petitioner No. 1 Bank at Ahmednagar.
R/o. Flat No. 7, Priyanka Towers,
1st Floor, Bhistgab, Savedi,
Ahmednagar, Tq. & Dist.
Ahmednagar.

....Petitioners.

(Ori. Accused Nos. 1, 5, 6 & 2)

Versus

1. Balasaheb s/o. Laxman Thube,
Age 42 years, Occu. Business,

R/o. Wadzire, Tq. Parner,
Dist. Ahmednagar.

2. The State of Maharashtra

....Respondents.
(No. 1 Orig. Complainant)

Mr. V.R. Dhorde Advocate h/f. Mr. R.N. Dhorde, Sr. Counsel for petitioners.

Mrs. Shilpa Jahagirdar, Advocate for respondent No. 1.

Mr. S.J. Salgare, APP for State/respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 31st January, 2017.

ORAL JUDGMENT :

1) During arguments, the learned counsel for petitioners submitted that he is withdrawing the proceeding of petitioner No. 4 - Shantaram Bapu Kalaskar, who was working as Branch Manager at the relevant time. So, the petition of petitioner No. 4 is disposed of as withdrawn. Petition of petitioner Nos. 1 to 3 is being decided on merits. Both the sides are heard.

2) The petition is filed for relief of quashing the proceeding of R.T.C. No. 168/2006, which is pending in the Court of Chief Judicial Magistrate, Ahmednagar and which is filed by present respondent No. 1 for offences punishable under sections 406, 408, 409, 420, 468, 120-B etc. of Indian Penal Code. On the

basis of allegations made in the complaint and verification made under section 200 of Criminal Procedure Code, process is issued by the learned J.M.F.C. for aforesaid offences.

3) Complainant was a member of respondent No. 1 bank and to him, cash credit loan was sanctioned by accused bank. There are allegations that in the year 2002 and 2003 some amounts were shown to be withdrawn from the cash credit account by the complainant, but those amounts were not actually withdrawn and no document for withdrawal was signed by the complainant. The total amount, according to him, was Rs. 3.71 lakh and the accused persons had committed fraud and had misappropriated the amount by creation of false record of account.

4) Present petitioner No. 4 - Shantaram was Branch Manager of the branch where the incident took place. Remaining petitioners i.e. petitioner No. 1 is bank, petitioner No. 2 is Managing Director of petitioner No. 1 bank and petitioner No. 3 is Chairman of the petitioner No. 1 bank.

5) In view of nature of procedure which is followed in the bank in respect of the withdrawal and also the deposit of the

amount in the account, it can be said that the staff like Cashier, Clerk and Manager are involved in such transactions. The Managing Directors or the Chairman are not involved directly or indirectly in such transactions. There need to be specific allegations to show as to how the Managing Director or the Chairman were involved and as to how they were responsible for such false record. There are no specific allegations as against them.

6) The learned counsel for petitioners drew the attention of this Court to some record like the admission of the guilt by the concerned Clerk-cum-Cashier Shri. Kashinath Belote. He has admitted that he had done the aforesaid mischief and he is responsible for creation of record and withdrawal of the amount. It appears that he deposited the amount when the inquiry was started on the basis of complaint given by the present complainant to the bank.

7) The learned counsel for petitioners submitted that immediately after receipt of the complaint from the customer, inquiry was started and in the inquiry, the bank came to the conclusion that it was mischief of staff Shri. Kashinath Belote. Record was shown to this Court which is to the effect that he

admitted the guilt and even deposited the amount. The submissions made show that the amount, which was wrongly withdrawn from the account of complainant, was credited in the account and so, no financial loss was sustained by the complainant. Further, the submissions made show that after starting of the dispute and after starting of the procedure under Secularization Act, there was one time settlement and the account is settled and the complainant is not in dues of anything in respect of loan amount. Thus, the submissions made and the record show that the Managing Director or the Chairman were not directly or indirectly involved in the aforesaid incident.

8) The learned counsel for respondent, original complainant placed reliance on some observations made by this Court in the case reported as **2005 ALL MR (Cri) 3091 [DSQ Holdings Ltd. & Ors. Vs. Infrastructure Leasing and Financial Services Ltd. and Anr.]**. The learned counsel submitted that the order of issue process can be challenged by filing revision in Sessions Court. It is not disputed that present proceeding is filed under section 482 of Cr.P.C. Though it is true that the order of issue process could have been challenged by the present petitioners by filing revision in Sessions Court, however, considering the scope of the provision of section 482 of

Cr.P.C., this Court holds that in the present proceeding the propriety of the continuation of proceeding as against the petitioners need to be considered. In view of the facts quoted above, this Court holds that it will not be proper to allow to continue the proceeding as against petitioner Nos. 1 to 3.

9) In the result, the petition is allowed. The proceeding bearing R.T.C. No. 168/2006 as against present petitioner Nos. 1 to 3 is hereby quashed and set aside.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/