IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5197 OF 2017

. Chandrakant Hari Badhe
Age: 72 years, Occu.: Nil,
R/o.Badhewada Varangaon,
Tal. Bhusawal, Dist.Jalgaon. ..Applicant

Versus

1) The State of Maharashtra

2) Amjadkhan Alisher Khan
Age: Adul, Occu.: Education.

3) Alisher Khan Mohammad Khan
Age: Adult, Occu.: Pensioner,

Res.No.2 and 3 R/o.Khidki
Mohalla, Warangaon, Tal.Bhusawal,
Dist.Jalgaon.

4) The Registrar,
District Consumer Forum,
Jalgaon, Dist.Jalgaon,
Office situated Near Collector
Office, Jalngaon. ..Respondents

...

Advocate for Applicant : Mr.Chavan Pravin P.
APP for Respondent No.1 : Mr.A.A.Jagatkar

...

CORAM : PRAKASH D.NAIK, J.
DATED : 03.11.2017

JUDGMENT:-

1) The applicant in this application was the Chairman of Sahakar Mitra Shri.Chandrakant Hari Badhe Sir Urban Cooperative Credit Society Ltd., Varangaon, since 17.2.2004 to 30.5.2007. He was also Director since 31.5.2007 to 25.6.2009. It is the case of the applicant that he had not taken any loan from the said Credit Society, which is evident from the certificate issued by the Manager of the said Society dated 30.8.2012. It is contended by the applicant that Mr.Hiralal Muljibhai Patel was Chairman of the said Credit Society since 31.5.2017 till 3.10.2007. Mr.Baliram Keshav Mali was Incharge Chairman since 4.10.2007 till 9.1.2008. Thereafter, he was appointed as a regular Chairman, which is also evident from the certificate dated 6.8.2013 issued by the Manager of the said Credit Society.

2) The Co-operative Department appointed Administrator on the said Society since 25.6.2009 and the Administrator has taken charge on 26.6.2009, which is apparent from

Resolution dated 26.6.2009. The elections of the said Society were held and newly elected body has taken charge for the period 1.11.2010 to 20.2.2014. The applicant further contends that the Cooperative Department has appointed Liquidator on the said Credit Society by order dated 21.2.2014 and since then the Liquidator is Incharge of the said Credit Society. The deposits with the said Credit Society in the year 2007 were Rs.318.25 Crores. Huge deposit was refunded and since 31.7.2017, deposits were Rs.110.46 Crores. The loan amount due as on 31.7.2017 was Rs.129.54 Crores. It is submitted that the respondent Nos.2 and 3 filed a consumer complaint with District Consumer Forum, Jalgaon, bearing No.540 of 2009. The complaint was allowed by the Consumer Forum vide order dated 4.1.2011. In pursuant to that, the respondent Nos.2 and 3 filed Darkhast under Section 27 of the of the Consumer Protection Act, 1986 bearing No.95 of 2011. It is submitted that the respondent No.1 in the said Darkhast is Sahakar Mitra Shri.Chandrakant Hari Badhe Sir Urban Cooperative Credit Society Ltd., Varangaon. The amendment was carried out and the Liquidator Mr.R.D.Ghumare was added as party respondent as per order of the District Consumer Forum.

3) The applicant states that the District Consumer Forum had issued non-bailable warrant on 19.12.2016 against the opponent No.1. The opponent No.1 is Sahakar Mitra Shri.Chandrakant Hari Badhe Sir Urban Cooperative Credit Society Ltd., Varangaon. The respondent No.2 filed an application on 5.7.2017 for action under Section 82 of the Code of Criminal Procedure Code. The presiding Officer and Member of Consumer Forum passed an order on 5.7.2017 for paper publication under Section 82 of the Code of Criminal Procedure. It is submitted that the original complainant has filed an application on 5.7.2017 to declare the opponents as absconder under Section 82 of the Code of Criminal Procedure and immediately the District Consumer Forum has passed an order under Sections 82 and 83 without there being any report from the Police. It is submitted that no bailable or non-

bailable warrant was issued against the applicant. The District Consumer Forum had adopted the procedure, which is contrary to law. It is submitted that notice for proclamation was issued against the applicant in the name of Superintendent of Police on 11.7.2017.

4) According to the applicant, he appeared before the Forum on 11.8.2017. He applied for bail. The application preferred by the applicant was rejected by the District Consumer Forum. The applicant was taken in custody and sent to Magisterial custody. It is submitted that in the same case, the District Consumer Forum has released the other opponents in the complaint on 11.8.2017 on bail. The said opponents had also appeared before the District Consumer Forum pursuant to the order dated 5.7.2017 issued under Section 82 of the Code of Criminal Procedure. The applicant again preferred an application for bail before the Forum on 24.8.2017 The Forum rejected the said application.

5) The applicant states that without issuing warrant, the arrest of the applicant was illegal. There is violation of fundamental right of the applicant. The District Consumer Forum had observed that there are 100 cases against the applicant, which was made without ascertaining the truth. The applicant was remanded to custody. Although the offence was bailable, the application was rejected. It is submitted that the orders of District Consumer Forum dated 11.8.2017 and 24.8.2017 are illegal. The order remanding the applicant to judicial custody is contrary to law. It is submitted that the procedure under Code of Criminal Procedure is not applicable to the District Consumer Forum and hence, the procedure adopted by the District Consumer Forum is contrary to law. It is also submitted that the applicant needs to be compensated for the illegal detention.

6) The learned counsel for the applicant relied upon the decision of the Supreme Court in the case of *Inder Mohan Goswami and Anr*. *Vs*. *State of Uttaranchal and*

ors., reported in ***AIR 2008 SC, 251*** and the decision in the case of *Dinesh Dutt Joshi Vs. The State of Rajasthan and another,* reported in ***2001(4) Crimes (SC), 86.***

7) The application was heard by this Court on 5.10.2017, by way of interim order, the applicant was directed to be released on bail on furnishing Personal Bond of Rs.5,000/- with one surety of the like amount. In pursuant to that, the applicant has been released on bail by District Consumer Forum on 10.10.2017 after executing the requisite bond as directed by this Court.

8) Learned APP opposed the reliefs sought by the applicant. It is submitted by the learned APP that the application should not be entertained by this Court. It is submitted that the applicant has alternate remedy to challenge the impugned order by preferring the appropriate proceedings before the appellant authority.

9) Learned APP placed reliance upon the following

decisions:-

(a) Judgment of the Supreme Court dated 6.7.2010 in Civil Appeal Nos.4902-04 of 2010 in case of Om Prakash Saini Vs. DCM Ltd., and others.

(b) Order of the Supreme Court dated 7.12.2011 in Civil Appeal No.10706 of 2011 in case of Nivedita Sharma Vs. Cellular Operators Assn. of India & Ors.

(c) Order of the Supreme Court dated 6.8.2012 in S.L.P.(C) No.24228-24229 of 2012 in case of Cicily Kallarackal Vs. Vehicle Factory.

(d) Order of the Bombay High Court dated 20.6.2014 in Writ Petition No.4264 of 2014 in case of Ackruti Jay Developers Vs. State of Maharashtra & Ors.

(e) Order of Bombay High Court dated 7.2.2012 in Writ Petition No.4415 of 2011 in case of M/s.Shewalkar Developers Ltd., Vs. State Commissioner for Consumer Disputes Bench, Nagpur and another.

10) I have perused the documents on record. It is

pertinent to note that apparently no warrant was issued against the applicant by the District Consumer Forum. The applicant had appeared before the Forum since proclamation notice was issued on application of complainant. The complainant preferred an application before the District Consumer Forum stating that the opponents be declared absconders under Section 82 of the Code of Criminal Procedure. It was also prayed that complainant be permitted to issue publication in newspaper in accordance with the order passed by the District Consumer Forum declaring the opponents as absconding. The District Consumer Forum surprisingly passed an order on the same day issuing proclamation by paper publication under Section 82 of the Code of Criminal Procedure and that the same be affixed at conspicuous place. It was also stated that, if the opponents fail to appear, the property would be attached vide Section 83 of Code of Criminal Procedure. The order does not indicate that there was any report from the Police that the bailable warrant issued by the Court could not be executed or that the opponents are avoiding the same. The District Consumer Forum has not adhered to provisions of Code of Criminal Procedure. The applicant was present before the District Consumer Forum on 11.8.2017. He preferred an application for bail. However, he was taken into MCR and remanded to Magisterial Custody. The bail application was rejected. There was no adverse report by Police against the applicant before the District Consumer Forum. It is not clear from the order under what provisions of law, the applicant was taken into custody. There was no reason for the District Consumer Forum to remand the applicant to custody, more particularly, when no warrant was issued against him and others were directed to be released on bail. It is also required to be noted that, the case was bailable. It is also noted that by way of interim order, the applicant has been directed to be released on the bail and the said order has been executed and presently the applicant is at liberty. Since the question raised in this application relates to liberty of the citizen and it was agitated that the orders were passed without following due process of law, this Court can entertain this application under Section 482 of the Code of the Criminal Procedure. The appeal is provided against the order passed by the District Consumer Forum, if the order is passed in the proceedings under Section 27 of the Consumer Protection Act. The decisions relied upon by the learned APP are in different context wherein the Courts have considered the issue relating to alternate remedy for preferring an appeal against the order passed by the Forum.

11) In the case of *Inder Mohan Goswami* (supra), the Apex Court has observed that the inherent powers under Section 482 of the Code of Criminal Procedure exists for advancement of justice. In paragraph No.24 of the said decision, it has been observed that the inherent powers under Section 482 of the Code of Criminal Procedure though vide have to be exercised sparingly, carefully and with great caution and only when such exercise is

justified by the tests specifically laid down in the said Section itself. It is further observed that the authority of the Court exists for the advancement of justice. If any abuse of process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking the inherent powers in absence of specific provisions in the Statute. It is also observed that the Court should properly balance both personal liberty and societal interest before issuing warrants. Non-bailable warrant should be issued to bring a person to the Court when summons of bailable warrant would be unlikely to have the desired result. The warrants either bailable or non-bailable should never be issued without proper scrutiny of the facts and complete application of mind, due to extremely serious consequences and ramifications which ensue on issuance of warrants.

12) In the decision in the case of *Dinesh Dutt Joshi* (supra), the Supreme Court has observed that Section 482

of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Code or otherwise to secure the ends of justice. The Court has inherent powers to act *ex-debito justitiae* to do with real and substantial justice for the administration of which alone it exits or to prevent abuse of process of the Code. It is also observed that the powers under Section 482 can be exercised whenever any lacunae are found in procedural law.

13) In the present case the impugned orders were contrary to law and the applicant was taken into custody and the application for bail was rejected. In the decision in the case of ***Om Prakash Saini*** (supra) relied upon by the learned APP, admittedly, the respondent therein had availed all the alternate remedies available under Section 21 of the District Consumer Forum. During the pendency of the appeal, the respondent preferred to

challenge the order of the said Commission by filing petition under Section 227 of the Constitution, which was entertained by the Court. The matter was remanded back to the Court with an observation that the High Court to take note of the fact that effective alternate remedy of appeal is available to the respondent therein. In the said proceedings, the said Commission had allowed the complaint and directed the respondent to pay the majority amount to the appellant as per terms of contract along with interest and the said order was challenged by the respondent by filing an appeal under Section 21 of the said Act and thereafter, the petition under Article 227 of Constitution of India, is preferred, challenging the jurisdiction of the District Consumer Forum. Hence, the said decision is not applicable in the present case. All other decisions relied upon by the learned APP are also based on similar circumstances wherein the orders passed by the Forum were under challenge.

14) In the present case, the order passed by the

District Consumer Forum on 11.8.2017 remanding the applicant to custody is challenged. The applicant has also challenged the order passed by the Court rejecting the application for bail on the ground that presence of the accused is necessary. The other persons against whom the warrant was issued were directed to be released on bail. It is the case of the applicant that although no warrant was issued, he was taken into custody and that the District Consumer Forum had adopted wrong procedure while passing the impugned orders. It is in this circumstance for the reasons stated above, the application is entertained. The applicant is released on bail by this Court, which order has been executed by the District Consumer Forum on 10.10.2017.

15) In view of the aforesaid circumstances while exercising powers under Section 482, I am inclined to set aside the order dated 11.8.2017 remanding the applicant to custody and refusing to grant bail. However, the prayer for compensation by imposing penalty on the State

cannot be considered in this application. The applicant may resort to any other remedy available in law. Hence, I pass the following order:-

ORDER

(I) The Criminal Application No.5197 of 2017 is allowed.

(II) The Order dated 11.8.2017 passed by District Consumer Forum in Recovery Application No.95 of 2011 is set aside.

(III) The interim order dated 5.10.2017 passed by this Court releasing the applicant on bail on furnishing P.R.Bond of Rs.5,000/- with one surety of like amount, is confirmed.

(IV) Application stands disposed of.

[PRAKASH D.NAIK, J.]