

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.709 OF 2017

SMT.HINA HITESH SHAH)...PETITIONER

V/s.

KRISHNA SUDAM MALI AND ORS.)...RESPONDENTS

Mr.Hitesh Shah, Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th SEPTEMBER 2017

P.C. :

1 By this writ petition, the petitioner / original complainant is challenging the order dated 30th July 2016 passed by the learned trial Magistrate thereby rejecting the application of the writ petitioner / original complainant to join Special Recovery Officer as an accused in the private criminal complaint filed by her.

2 Heard the learned advocate appearing for the writ petitioner / original complainant. He argued that it was not an official duty of the Special Recovery Officer to seize the machinery from other factory located at another place. The writ petitioner was not concerned with the recovery proceedings. She was not a guarantor and therefore, the act committed by Special Recovery Officer cannot be said to be the act performed in discharge of his official duty. Therefore, in submission of the learned advocate for the petitioner / original complainant, the learned trial court erred in rejecting the application of the petitioner / original complainant for arraying the Special Recovery Officer as an accused to the proceedings.

3 The learned APP opposed the application by pointing out averments made in paragraph 7 of the complaint.

4 I have carefully considered the rival submissions and perused the complaint filed before the learned JMFC, Dahanu, by the writ petitioner, so also documents annexed to the petition.

5 A private criminal complaint came to be filed by the writ petitioner / original complainant with an averment that accused persons have committed offences punishable under Sections 452, 447, 341, 427, 182 read with Section 34 of the Indian Penal Code (IPC). At that time, Special Recovery Officer was not made an accused. Averments in paragraph 7 of the complaint read thus :

“7 The Complainant submits that it was the duty of the accused to show the exact premises which was to be sealed. However, all the accused in conspiracy and in collusion with each other, gave false information to Special Recovery Officer, shown different factory, who is a Public Servant, at the instance of accused no.6, with malafide intention that the Special Recovery Officer would use his lawful power to the injury of other person, and with this intention have shown the premises of the Complainant, representing that the same belonged to the said Hitesh Shah. Usually in such matters, the Chairman of the Bank does not take active part, but as the accused no.6 has grudge against the borrower, he has taken active part.”

Complainant, as such, has come up with a stand that the Special Recovery Officer was misguided by accused persons requiring him to seize machinery belonging to the writ petitioner.

6 It is seen that, husband of the complainant had taken a loan of Rs.1 lakh from Dahanu Road Janata Co-operative Bank Ltd. He failed to repay that loan which resulted in issuance of recovery certificate under Maharashtra Co-operative Societies Act. In execution of that recovery certificate, according to the writ petitioner, her two machineries were wrongfully taken away from her factory premises. In the light of this case sought to be made out by the writ petitioner / original complainant, averments made in paragraph 7 of the complaint filed by her becomes relevant. The Special Recovery Officer in discharge of his official duties visited the premises and in execution of recovery certificate seized some machineries.

7 The learned trial court rejected the application for joining the Special Recovery Officer as an accused with a reason

that the Special Recovery Officer has performed an act in discharge of his official duty and as such, without sanction, he cannot be prosecuted. Whether the act is done while acting or purporting to act in discharge of official duty or not is to be judged by considering whether the act alleged is directly and reasonably connected with the official duty. Once any act or omission is found to be done /committed by the public servant in discharge of his duty, then it must receive liberal and wide construe so far as its official nature is concerned. In the case in hand, the Special Recovery Officer has visited the premises in discharge of his official duty and averments made in the complaint itself show that he was misled by other accused persons. Hence, the act alleged against Special Recovery Officer was necessarily performed by him in discharge of his official duty. As such, for want of sanction, he cannot be prosecuted. No fault can be found in the order of the learned trial court rejecting the application of the writ petitioner / original complainant. The writ petition is devoid of merits and hence the order :

ORDER

- i) The writ petition is dismissed.

(A. M. BADAR, J.)