

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1298 OF 2017

Jai Kumar Shobhagamalji Sethia .. Petitioner.

Vs.

M/s. Dangi Financial & Management
Consultancy Pvt. Ltd. & Anr. .. Respondents.

Mr.A.V. Bubere i/b Rajendra Rathod for the Petitioner.

Mr.Vinod Chate APP for the State.

CORAM : A. K. MENON, J.

DATED : 22ND JUNE, 2017

P.C. :

1. This Writ Petition challenges the order dated 26th September, 2016 passed by the chief Metropolitan Magistrate Court and the order dated 17th February, 2017 passed by the Sessions Court rejecting the application made by the petitioner for discharge from the complaint and issuance of process for the offences under Section 406, 420 and 409 of the Indian Penal Code.

2. The complaint proceeds on the basis that the petitioner was the Branch Manager at Surat branch of the complainant company. He ceased to be employed with the complainant company from 1st April, 1998 when Surat office was admittedly closed down. It appears that several complaints were

received from the customers during October November 1998 to the effect that the customers have not received their shares and several persons have not received payment and accounts have not been settled by the branch headed by the petitioner. It further reveals that between 17th June, 1998 and 30th June, 1998 several payments were made under the cheques and vouchers in the name of third parties and there was no explanation provided for the same by the petitioner. The National Stock Exchange had also filed a complaint regarding non transfer of shares to certain parties.

3. The Sessions Court found that the case was made out for framing charges. In the circumstances the application for discharge which was rejected by the Magistrate Court was upheld and the revision came to be dismissed. Learned counsel for the petitioner has pointed out various instances pertaining to the allegations. He submitted that respondent no.1 – company itself had written to the Assistant Commissioner of Central Excise stating that Surat branch had been closed from 1st April, 1998. Accordingly, it was submitted that when the company itself had admitted that the branch has closed there was no occasion to file the complaint against former branch Manager.

4. The record before the Court, however, seems to be contrary. Since the company has confirmed that the branch had been closed no transactions could have taken place at the Surat branch. Once it is admitted that Surat branch had been closed on 1st April, 1998 these transactions are suspect.

Learned counsel for the petitioner also relied upon the judgment of the Madras High Court in *Jayaprakash vs. The State, Egmore, Chennai and Anr. in Criminal Original Petition No.16109 of 2010 dated 15th October, 2014* and relying upon paragraph 9 he submitted that a complaint under Sections 406 and 420 cannot be proceeded through together and these two provisions cannot be simultaneously invoked. This is the aspect which can be gone into at the time of trial. It is always open for the petitioner to raise such defences as permissible in law.

5. I find no reason to interfere with the orders under challenge in Writ jurisdiction. In the circumstances, I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No orders as to the costs.

(A.K. MENON, J.)