

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

WRIT PETITION NO. 1569 OF 2015

Narayan Hari Waydande

..Petitioner

v/s.

Kolhapur District Co-operative
Agricultural and Rural Multipurpose
Development Bank

..Respondents

Mr. Ashish Gaikwad for the Petitioner.

Mr. Shekhar Ingawale i/b. Ranjana Todankar for the Respondent No.1.

Mrs. Anjali Helekar for the Respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 03, 2017.**

P.C.

1. The petitioner herein has challenged the order dated 15th December, 2014 whereby the learned Adhoc Sessions Judge, Kolhapur has allowed the revision application filed by the respondent no.1 and set aside the Order dated 2nd May, 2014 passed by the learned JMFC, Kolhapur in Criminal Case No. 141 of 2014 issuing process against respondent no.1 for offences under Section 177, 197, 406, 420, 422, 423 r/w. 34 of the Indian Penal Code
2. The records reveal that the petitioner herein was employed by the respondent no.1 bank and was subsequently promoted as

Accountant and thereafter as a Manager. It appears that the bank proposed to revert the petitioner to the post of Accountant. The petitioner claimed that the same is in contravention of Government Resolution dated 20th October, 1997. The petitioner further claimed that the bank had not brought the said G.R. to the notice of the Industrial Tribunal in the proceeding between some of the bank employees and the Union. In view of the above, the petitioner filed complaint before the learned JMFC, Kolhapur. The JMFC, Kolhapur by Order dated 2nd May, 2014 issued process under Section 177, 197, 406, 420, 422, 423 r/w. 34 of IPC.

3. The respondent no.1 challenged the said order in Criminal Revision Application No.111 of 2014. The learned Sessions Judge held that the dispute is mainly over interpretation of the Government Resolution and that the complaint on the face of it does not disclose any offence which warrants criminal prosecution. The learned-Judge therefore set aside the Order dated 2nd May, 2014 and dismissed the complaint under Section 203 of Cr.P.C. Being aggrieved by the said order, the petitioner has invoked the jurisdiction of this Court.

4. Heard Mr. Gaikwad, the learned Counsel for the petitioner and

Mr. Ingawale, the learned Counsel for the respondent no.1. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

5. The petitioner herein was employed in the respondent no.1 bank and was subsequently promoted as Accountant. He worked as Accountant from 3.3.1997 till 1.9.2004 and thereafter he was promoted as a Manager w.e.f. 1.9.2004. It appears that the respondent no.1 had proposed to revert the petitioner to the post of Accountant in view of the Government Resolution dated 26.11.1998. The petitioner had challenged the action of the respondent before this Court in Writ Petition No. 6460 of 2010. By order dated 20th October, 2010 the petitioner was allowed to withdraw the said petition with liberty to adopt appropriate remedy. Pursuant to the said order, the petitioner has filed proceeding before the Co-operative Court at Kolhapur challenging the action of the respondent no.1 by reverting him to the post of Accountant. It is not in dispute that the said proceedings are pending before the Appropriate Authority.

6. The records reveal that the entire dispute is over the action of the respondent no.1 in reverting the petitioner to the post of

Accountant. The learned Counsel for the petitioner, despite elaborate narration of facts, has not been able to point out any act or omission on the part of the respondent no.1 which warrants criminal prosecution. The facts so narrated in detail, even if taken at its face value and are considered to be true and correct narration of facts, do not disclose the essential ingredients to justify action under Section 177, 197, 406, 420, 422, 423, r/w. 34 of the Indian Penal Code.

7. The Apex Court, in ***Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749*** has observed:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

8. In the instant case, the allegations made in the complaint do not disclose any offence. Hence, the learned Session Judge was perfectly justified in holding that the allegations made in the complaint does not warrant criminal prosecution.

9. In the light of the above discussion, the impugned order is neither illegal nor erroneous. The petition has absolutely no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)