IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2412 OF 2015
WITH
CRIMINAL APPLICATION NO. 478 OF 2016

Shrikrishna Manohar Kelkar …Petitioner/applicant

vs.

Bhagini Nivedita Bank through its
Chairman Jayashree Kale & ors. …Respondents

Mr. Mandar Limaye, Advocate for the petitioner/applicant.
Ms. Gauri Godse, Advocate for respondent no.1(a).
Mr. V. B. Konde Deshmukh, A.P.P. for respondent no.2/State.

Coram : Smt. R. P. SondurBaldota, J.
Date : 28th February, 2017

P.C. :

1. This is a common order on the above petition and the Criminal application filed by the petitioner on 29th November, 2016.

2. The petitioner, who is a senior practicing advocate from Pune has filed this petition to challenge the order dated 16th June, 2015 passed by the Sessions Court, Pune on the Miscellaneous Application No. 180 of 2015 filed by respondent no.1 (a). The petition was filed on 22nd June, 2015. He moved the Court for urgent relief on 24th June, 2015 seeking stay of the impugned order. By the order passed on that day, he was permitted to delete respondent no.1 (b) from the proceedings and was granted stay of the impugned order. Thereafter on 29th November, 2016 he has filed the above Civil Application praying for disposal of the petition, with only a direction to the Trial Court to expedite the trial in the complaint filed by him. Respondent no.1 (a) to the petition is Bhagini Nivedita Bank ('the Bank', for short) being prosecuted through it's then Chairman Smt. Jayashree Kale.

3. The factual background of the petition is as under :

The petitioner is a member and share-holder of the Bank. His account is a joint account, joint with his mother and brother held with Rasta Peth Branch of the Bank. He, on 23rd January, 2015 filed a private complaint being R.C.C. No.1879 of 2015 against the Chairman and Branch Manager of the Bank, alleging commission of offences punishable under Section 379, 381, 403, 406, 408, 409, 420 r/w 120B of Indian Penal Code.

4. In the complaint the petitioner alleges that on 1st July, 1992 a joint savings account was opened by him with the Bank. Since then he and he alone operated the same for the purpose of his office transactions and for expenses of his family. He had been exclusively using the account for himself. The other two joint holders of the Bank account, left the common address recorded with the Bank, in the year 2004 and 2005 and the petitioner continued to operate the account exclusively. The petitioner had also invested substantial amount by way of fixed deposits with the Rasta Peth branch of the Bank. In the month of February, 2012 the petitioner accidentally happened to see the account description on his passbook and realised that the constitution of the account had been changed and the name of his mother was shown as the first account holder, the name of the brother was shown as second account holder and that of petitioner as the third account holder. There was also change in the address from "151 Rasta Peth", the address of the petitioner to "1787 Sadashiv Peth", the present address of the joint account holders. According to the petitioner it was a planned move by the Chairman and the Branch Manager of the Bank who had forged the documents in their possession with an eye on the amount of Rs.3,19,000/- in his savings account as well his fixed deposits. The petitioner had allegedly enquired with the joint account holders and they expressed their ignorance about the change. It is not the case of the petitioner that there was any unauthorized transaction in his bank account. The petitioner then sent notice to the Chairman of the Bank as well as the Branch Manager. They sent a reply stating that there was no change in the constitution of the account holders and the change in the address was as per the communication received by the Bank from the other two account holders on the change in their addresses. As per the Bank records the mother of the petitioner was always the first account holder and the change in the address had been recorded prior to the year 2005.

5. On the above complaint, the Trial Court had by the order dated 8th May, 2015 issued process against respondent nos. 1(a) and 1(b) under Section 204 Criminal Procedure Code. Respondent nos. 1(a) and 1(b) then filed application for bail, on which order of temporary bail came to be passed on 5th June, 2015. The temporary bail granted was till 8th June, 2015. Respondent no.1 (a) had also filed an application for permission to travel abroad since even before the summons in the complaint was served upon her, she had planned to visit her son in America to look after her daughter-in-law for post delivery care and to take care of her infant granddaughter. Her tickets to travel to Seattle in America had been booked on 19th February, 2015. Her return journey was also scheduled on 2nd September, 2015 and the tickets therefor reserved. She disclosed in the application that she is a retired officer of Bank of Baroda and the Managing Trustee of “Jagruti Seva Sanstha”. At the relevant time she was the Director of the Bank. She has been residing in India with her family. Her son being settled in America she needed to visit him to help the daughter-in-law. She proposed to commence her journey on 25th June, 2015. The Trial Court by it’s order dated 11th June, 2015 granted bail to respondent no. 1(a) on condition that she surrenders her pass-port within eight days of the order and rejected her application to travel abroad.

6. Being aggrieved by the condition imposed, respondent no.1(a) approached the Sessions Court with Criminal Miscellaneous Application No. 180 of 2015. The Sessions Court by it's order dated 17th June, 2015 stayed the order of the Trial Court and directed respondent no. 1(a) to surrender before the Trial Court on or before 4th September, 2015. The operative part of the order reads as under :

> “Heard perused the application and the main application as also the affidavit. The applicant has given her address where is going to stay in U.S.A. The applicant is returning to Pune on 2.9.2015.
>
> In these circumstances, the impugned order is stayed pending this proceeding with a condition that the applicant shall surrender before the T.C. on or before 4.9.2015.”

7. On 22nd June, 2015, the petitioner filed the present petition in which the prayers as typed originally i.e. prayers (a) to (d) were only for interim reliefs. Later, by hand, a prayer for permanent relief to challenge the order of the Sessions Court was added. At para 12 of the petition, the petitioner avers that respondent no.1 had produced Air ticket showing that she was leaving on 25th June, 2015 and returning on 2nd September, 2015. The petitioner, who is a practicing advocate moved this Court one day prior to the departure of respondent no.1(a) i.e. on 24th June, 2015 for urgent reliefs without notice to her. By the order passed on that day, the order impugned in the petition i.e. the order of the Sessions Court staying the order of the Trial Court directing respondent no.1(a) to deposit her pass-port in the Trial Court, was stayed. It’s automatic effect was requirement of compliance by respondent no.1(a) of the direction to her by the Trial Court of deposit of her pass-port in the Trial Court. The petitioner communicated this order to the Trial Court on 26th June, 2015. Acting upon the order, the Trial Court sent notice on the same day to respondent no.1(a) to her address in America calling upon her to deposit her pass-port in the Court within a period of eight days from the date of receipt of the notice. Unaware of these developments respondent no.1(a) had already travelled as per her schedule on 25th June, 2015. On receipt of the notice from the Trial Court she had to rush to India immediately causing extensive mental, physical harassment and financial loss in order to comply with the order.

8. After the purpose of filing of the petition was achieved, the petitioner filed Criminal Application No.478 of 2016 stating at para 12 that he desired to withdraw the petition and asking for expeditious hearing of his complaint on the ground that he himself as well as respondent no.1(a) are senior citizen. The other ground stated by him in the application is of an apprehension that the delay in trial may result into tampering/altering and destroying the original documents which are in the custody of the Bank. Respondent no.1 (a) has filed reply to the application not only contesting the apprehension expressed by the petitioner but also submitting that the conduct of the petitioner in prosecuting the petition and in filing the application is mischievous.

9. Undoubtedly, the manner in which the petitioner has prosecuted the present petition leaves much to be desired. As has been pointed by Ms. Godse, the learned advocate for respondent no.1(a) the very filing of the petition has been out of vengeance and with definite intention to harass respondent no.1(a). The petitioner is well aware of the status of respondent no.1(a) in the society and that she has roots in India that would compel her to return from America. Apart from her family residing here, respondent no.1(a) is a Director of the Bank. She is a Managing Trustee of "Jagruti Seva Sanstha". Besides as has been pointed by respondent no.1(a) in her application for permission to travel abroad, the American embassy even otherwise does not allow extending of stay for more than six months. Therefore respondent no.1(a) had to return to India within six months from the date of her entry into America. The application of respondent no.1(a) gave a specific reason for her visit to America which was to take care of her daughter-in-law in the post delivery period and to take care of the infant granddaughter. The petitioner was well aware even as he moved this Court for ad-interim stay of the order of the Sessions Court that by the time he gets a copy of the order and takes it to the Trial Court for the purpose of it's execution, respondent no.1(a) would have left the country and be in America. It is not the case of the petitioner that respondent no.1(a) has any criminal background. In the circumstances, in fact, there was no reason for the petitioner to file the present petition. Particularly in view of the direction by the Sessions Court in the impugned order that respondent no.1(a) shall surrender before the Trial Court on or before 4th September, 2015.

10. Mr. Limaye, the learned advocate for the petitioner submits that respondent no.1(a) ought not to have moved the Sessions Court without notice to the petitioner and secured the impugned order. Since that was the conduct of respondent no.1(a) herself, according to him she can make no grievance about the ex-parte ad-interim order passed in the present petition.

11. The circumstances in which respondent no.1(a) moved the Sessions Court are obviously different. There can be no comparison between the two applications. The visit of respondent no.1(a) to America was pre-scheduled. All the arrangements therefor had already been made. Besides, it is not as if the complaint of the petitioner was right for hearing. Since the date of departure of respondent no.1(a) was close and since there could be no reasonable justification for restricting her visit to America, respondent no.1(a) apparently moved the Sessions Court in urgency. All these circumstances, the petitioner being a senior practicing advocate could have been appreciated by him in correct spirit. Therefore, I find substance in the argument of Ms. Godse that the present petition has been mischievously filed by the petitioner in order to cause harassment to respondent no.1(a).

12. There have been other grievances raised by respondent no.1(a) as regards service of notice upon her. She has been served with an uncorrected copy of the petition. This has been sought to be justified by the petitioner as an inadvertent error. In my opinion, it is not necessary to go into this aspect of the matter.

13. In the above circumstances, the petition and the application are dismissed with costs. The petitioner shall pay costs quantified at Rs.30,000/- to respondent no.1(a).

[Smt. R. P. SondurBaldota, J.]