

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3328 OF 2015

Janaki Ajay Choudhary

....Petitioner

Vs.

P-Cube Enterprises Pvt Ltd and Ors

... Respondents

WITH
CRIMINAL WRIT PETITION NO. 3329 OF 2015

Rajashree Ajay Choudhary

....Petitioner

V/s.

P-Cube Enterprises Pvt Ltd and Ors

... Respondents

Mr. Abhaykumar Apte Advocate for Petitioners
Mr. Tejesh Dande i/b Tejesh Dande and Associates
for respondent no. 1.
Ms. Anamika Malhotra APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 4th APRIL, 2017.

P.C.

1) Heard.

2) Rule. Rule made returnable forthwith with the consent of the parties.

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3) Petitioner in writ petition no. 3328 of 2015 is challenging the order dated 31/07/2013 passed by the Judicial Magistrate First Class, Court No. 9, Pune in Criminal Case No. 3478 of 2013 and order dated 15/11/2014 passed by the Additional Sessions Judge, Pune in Criminal Revision Application No. 738 of 2013.

4) The learned counsel for the petitioners submits that petitioner in writ petition no. 3328 of 2015 and 3329 of 2015 cannot be prosecuted for offence punishable under section 138 of Negotiable Instruments Act and 406 of the Indian Penal Code.

5) The facts of the case in a nutshell are as follows:

(i) Petitioners herein had entered into an agreement with respondent company by agreement dated 09/09/2011. Petitioners had solicited personal loan for prosecuting higher studies in Law for the petitioner in writ petition no. 3328 of 2015. Respondent had extended loan of Rs. 21 Lacs. It was

agreed that they would repay the entire loan amount along with interest at the rate of 7% per annum on or before 31/03/2013. Needless to say that amount was entrusted in favour of the present petitioners.

(ii) The loan was not repaid within stipulated time. Upon inquiry with the petitioners, the company P-Cube Enterprises Pvt Ltd was receiving evasive answers. The said company is non banking finance company registered with Reserve Bank of India. The complainant was then constrained to file a complaint against the petitioners and accordingly complaint was filed on 14/06/2013 seeking prosecution of the petitioners by giving direction under section 156 (3) of Code of Criminal Procedure, 1973.

(iii) The learned Magistrate by an order dated 31/07/2013, after application of Judicial mind, had passed an order as follows:

“(1) Issue process against accused nos. 1 to 3 under section 406 of the Indian Penal Code and under section 138 of Negotiable Instruments Act.

(2) Case is dismissed under section 420 of the Indian Penal Code against the accused”.

6) Being aggrieved by the said order, petitioners had filed criminal revision application no. 738 of 2013 before the Sessions Court at Pune and the same was dismissed by assigning justifiable reasons.

7) The learned counsel for the petitioners submits that no case under section 406 of the Indian Penal Code is made out by the complainant in his complaint as there are no averments to that effect. It is alleged that petitioners have not utilized the loan amount for the purpose for which it was taken and that they have committed breach of trust. The learned counsel for the petitioners submits that in the absence of any cogent and convincing material to show that the loan amount was not utilized for the purpose for which it was taken would not amount to breach of trust.

8) Perused order passed by Revisional Court. Petitioners had not given any particulars to the effect that they had utilized the loan for the purpose for which it was taken.

9) It is contended by the learned counsel for the petitioners that at the time of executing the loan agreement, respondents had not sought for any particulars from the petitioners and therefore, they would not be entitled to claim that they have been cheated or that the petitioners have committed breach of trust.

10) As against this, the learned counsel for the respondents submits that the very fact that petitioners had not given any particulars before the Revisional Court about the expenses which were incurred for the purpose of education out of the loan amount, it is clear that it was not utilized for the said purpose. Respondents had bonafide impression that the said amount would be utilized for the purpose of education and they had faith in the petitioners and therefore, extended the loan amount. The learned counsel for the respondents also submits that respondent had filed a civil suit for recovery of the said amount. The said civil suit is decreed in favour of the plaintiff i.e. respondent herein. The decree is passed for an amount of Rs. 21 Lacs along with interest accrued thereupon.

11) The learned counsel for the petitioners submits that the said Judgment and Order is challenged before the High Court.

12) The learned counsel for the respondents submits that petitioners had deliberately chosen wrong jurisdiction as Hon'ble High Court would have no jurisdiction since the decree is less than for an amount of Rs. 50 Lacs.

13) Be that as it may, it is apparent on the face of record that petitioners have committed breach of trust and the same can be repudiated by them at the time of trial by giving statement under section 313 of Code of Criminal Procedure, 1973 since the whole transaction is within their special knowledge. The learned Revisional Court has passed a justifiable order which calls for no interference.

14) Hence, writ petitions being sans merits, stands rejected.

15) Rule is discharged.

16) It is made clear that the observations made herein above are restricted to the orders challenged in writ petition and the learned Trial Court shall not be influenced by the same at the time of trial.

(SMT. SADHANA S. JADHAV, J.)