

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1251 OF 2016

Kiran Ambadas Dhayafule & Ors. Applicants

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Rajiv Chavan, Senior Counsel a/w Priyanka Chavan i/by
Viresh Purwant for the Applicants.

Mr. Anand S. Kulkarni for Respondent no.2.

Mrs. P.P. Shinde, Additional P.P. for Respondent no.1- State
Mr. S.S. Pawar, API, EOW, Solapur City present.

Coram : R.M. Savant AND
Sarang V. Kotwal, JJ

Date : 13th March, 2018

P.C.

1 Leave to amend is granted so as to incorporate the prayers for quashing of the charge-sheet bearing No. RCC/51 of 2017. Amendment to be carried out forthwith.

2 The above application was originally filed for quashing of the F.I.R., dated 10th October, 2016 registered by the respondent no.2, who at the relevant time was the Branch

Manager of the Solapur Janata Sahakari Bank Limited of New Pacchapeth Branch, Solapur. In view of the fact that during the pendency of the above application, charge-sheet has been filed that the prayers have been amended so as to incorporate prayer clause (aa) for quashing of the charge-sheet. It seems that the applicants herein had taken financial assistance from a Consortium of banks of which the Solapur Janata Sahakari Bank Limited was the lead bank. The cause for registering the F.I.R. for the offences punishable under Sections 407, 420, 467, 468, 471, 379 read with 34 of the Indian Penal Code, was the factum of the applicants' dealing with the mortgaged property by executing an Agreement to Sale in favour of a third party. It seems that in view of the default committed by the applicants, a notice under Section 13(4) of SARFEASI Act came to be issued to the Applicants. Upon this, the applicants invoked the jurisdiction of the Debt Recovery Tribunal at Pune challenging the measures taken by the Consortium led by the Solapur Janata Sahakari Bank Limited. It seems that in the application filed by

the applicants, an order came to be passed by the Debt Recovery Tribunal (DRT) directing the applicants to deposit an amount of Rs.5.00 Crores out of the consideration that the applicants received on account of the Agreement to Sale being executed by them. The said order passed by the DRT came to challenged before this Court by way of Writ Petition No. 543 of 2015. The said writ petition came up before the Division Bench of this Court (V.M. Kanade & Revati Mohite Dere, JJ.), on which day a statement came to be made on behalf of the petitioners i.e. M/s Gouri Cotton Ginning and Pressing Mill and others, of which the petitioners are directors that they would deposit an amount of Rs.1.5 Crores till 15th April, 2015. The said undertaking was accepted and by accepting the said undertaking, the order passed by the DRT directing the petitioners to deposit Rs.5.00 Crores was stayed till the next date. It seems that the said amount of Rs.1.5 Crores was deposited in this Court. The petition has thereafter been withdrawn by the petitioners. The quashing of the charge-sheet has been sought on the ground

that the petitioners have discharged their liability towards the Consortium led by the Solapur Janata Sahakari Bank Limited. In view of the said case of the petitioners, we have, vide order dated 5th March, 2018 directed the Additional P.P., Mr. K.V. Saste, who was then appearing to take instructions from the investigating officer as regards the veracity of the claim of the petitioners and we had accordingly adjourned the matter to today. Today, when the matter is called out, the learned Additional P.P., Mrs. P.P. Shinde informed us that the representative of the Economic Offence Wing, Solapur City, API, S.S., Pawar is present in Court and he has made available the papers, which have been uncovered during the investigation. The said papers contain letter dated 5th January 2018 of the Laxmi Co-operative Bank Limited, Solapur. By which letter, the Laxmi Co-operative Bank Limited has informed the Assistant Police Inspector that the petitioners have discharged their liability towards the said bank and in view thereof they have absolutely no grievance against the petitioners. The said papers

also contain the letter dated 6th January 2018 of the Solapur Janata Sahakari Bank Limited, which letter is similarly addressed to API, E.O.W., Solapur by the Chief Executive Officer of the said Bank. To the said letter is annexed the Memorandum of Understanding dated 30th December 2016 between the Consortium and the Gouri Cotton Ginning and Pressing Mill as also the purchasers of the property, the said Memorandum of Understanding evidences the settlement arrived at between the parties. The said letter purports to answer the queries raised by the Investigating Officer. The query which is relevant to the present petition is query no. 2, which is answered by the said bank by stating that it has received the entire amount, which the petitioners were liable to pay to it. In so far as the proceedings before the DRT is concerned, the same are covered by query no.4, the answer to which query, the said bank has mentioned that it is not aware one way or other as to whether the proceedings are still pending or not.

3 This is in so far as the Laxmi Co-operative Bank Limited and Solapur Janata Sahakari Bank Limited, which as indicated above is the leader of the Consortium. In so far as the third bank i.e. Janaseva Sahakari Bank Limited, Pune is concerned, an affidavit has been filed by the petitioners to which affidavit is annexed the letter dated 29th March, 2017 of the said Janaseva Sahakari Bank Limited, Pune, which letter is addressed by the Deputy General Manager of the said Bank to M/s Gauri Cotton Ginning and pressing Mill. The said letter is in the form of “No dues Certificate”. The bank has in unequivocal terms mentioned that no dues are there in the name and account of M/s Gauri Cotton Ginning and Pressing Mill. Hence, the aforesaid, this is the factual foundation on the basis of which the quashing of the charge-sheet is sought by the applicants.

4 Having regard to the offences alleged against the petitioners, which offences interalia include the offences under Sections 420 and 467 of the Indian Penal Code, we have closely examined the case of the petitioners. On such examination, we

have found that the gravamen of the allegations against the petitioners is the petitioner's act of dealing with the property, which was mortgaged to the Consortium as security for the loan taken. We have not found any ingredients of the offences under Sections 467 or 420 of the Indian Penal Code. It is required to be noted that the parties were before the DRT in respect of the measures taken by the Consortium led by the lead bank i.e. Solapur Janata Sahakari Bank Ltd., in which proceedings, the order directing the petitioners to deposit an amount of Rs.5.00 Crores was passed, which can be said to have been modified by the Division Bench of this Court by accepting the undertaking filed by the petitioners that they would deposit an amount of Rs.1.5 Crores in this Court. The said fact has now been transcended by the letters of the member Banks of the Consortium namely the Laxmi Co-operative Bank Limited, Solapur, Solapur Janata Sahakari Bank Limited, and Janaseva Sahakari Bank Limited, Pune, letter of which Bank is annexed to the additional affidavit filed on behalf of the petitioners.

Having regard to all the aforesaid facts, we are of the view that case for quashing of the charge-sheet is made out as no useful purpose would be served by continuing the proceedings.

5 Having regard to the Judgments of the Apex Court in the cases of *Gian Singh Vs. State of Punjab & Anr.* reported in *(2012) 10 SCC 303* and *Narinder Singh & Ors. Vs. State of Punjab & Anr.* reported in *2014 AIR SCW 2065*, which would also lead to the same conclusion, there is no impediment in allowing the above Criminal Application. No useful purpose would be served in keeping the Criminal Application pending. The Application is allowed and made absolute in terms of prayer clause (aa).

6 The photocopy of the letters dated 5th January 2018 and 6th January 2018 of the Laxmi Co-operative Bank Limited, Solapur and the Solapur Janata Sahakari Bank Limited are taken on record and marked as “X” and “Y” for identification. The applicant no.5, Nagesh Devidas Dhayafule who is personally

present in the court states that the proceedings filed before the DRT by the Gauri Cotton Ginning & Pressing Mill would be withdrawn within two weeks from date. Statement accepted.

7 In the facts and circumstances of the case, where the machinery of this Court is utilized, the Applicants to deposit costs of Rs.25,000/- with the State Legal Aid Fund within six weeks from date. Receipt to be obtained and filed in the Registry.

(Sarang V. Kotwal, J.)

(R.M. Savant, J.)