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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2064 OF 2015

Gover Bomi Mubarakai .....Petitioner

V/s.

The State of Maharashtra ....Respondent

Ms. Asmita Sarangdhar a/w Ms. Sonali Patil for the petitioner.
Mr. H. J. Dedhiya, APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 6, 2018.

P.C.

Heard. On 04/09/2008, petitioner was co-opted as a director with Dahanu Road Janata Sahakari Bank, Dahanu (Hereinafter referred to as 'Co-operative bank' for the sake of brevity).

2 The petitioner in the said capacity as co-opted Director of the Co-operative bank was charge-sheeted in the crime no. I-54 of 2010 for offence punishable under sections 406, 409, 420 r/w 120 B of the Indian Penal Code. The sum and substance of the allegation

against the petitioner is that petitioner aligned with one Mr. Bharat Rajput, a director, alongwith other directors and misappropriated the amount of the bank.

3 The petitioner preferred an application under section 239 of the Code of Criminal Procedure, 1973 for discharge from the aforesaid crime which came to be rejected on 31/07/2014. Revision Application no. 32 of 2014 before the Additional Sessions Judge, Palghar against order of refusal to discharge was also dismissed on March 03/03/2015. As such, this petition.

4 The learned counsel for the petitioner would urge that the petitioner possess expertise knowledge of imparting skilled training in deaf and dumb high school. She was working as Speech Therapist and Audiologist. She is also a social worker and as such was co-opted as director. According to her, in view of provisions of section 73 (AAA) of the Maharashtra Co-operative Societies Act, 1960 (Hereinafter referred to as 'the said Act' for the sake of brevity) petitioner is not entitled to participate in the day to day business

and caste her vote in the proceedings of the bank. For the alleged misappropriation of the amount she cannot be held responsible. She would then urge that other accused persons who are full time directors of the bank has pressurized the petitioner to sign the resolution resulting in the registration of crime and as such she cannot be held responsible. She would invite attention of this Court to proceedings of meeting no. 5 held on 01/08/2009 so as to demonstrate that she was not the signatory or has not attended the said meeting. According to her, in subsequent meeting dated 18/08/2009, the minutes of earlier meeting were put for confirmation and she was pressurized to sign the same. She would then urge that there is no material on record to infer that she is a beneficiary of the misappropriated amount and as such she should be discharged from the criminal proceedings. A support is drawn from the judgment of the Apex Court in the matter of **K. Ramkrishna V/s. State of Bihar [2000 DGLS (Soft) 1443]** so as to claim that if it can be borne out of the record that applicant is not involved in crime in question and there is no evidence against her, applicant is entitled for discharge.

5 *Per contra* the learned APP opposed the claim and submits that the defence of the applicant/accused cannot be appreciated at this stage of the proceedings. It is further submitted that the fact remains that petitioner attended the proceedings of the meeting dated 18/08/2009 and has confirmed the decisions taken in the earlier meeting dated 01/08/2009. He would then urge that the material which was produced at the time of opposing bail application or grant of PCR cannot be relied for the discharge purpose. Further investigation in the matter speaks of involvement of petitioner in crime in question. Having regard to the fact that charge-sheeted was filed against the petitioner, based on the availability of sufficient evidence, application is liable to be dismissed.

6 Considered rival submissions. Co-option of the petitioner as director of the Co-operative bank is not the issue in dispute. What is claimed in the discharge application is that co-opted director was not having any powers and right under the said Act to attend and vote in a meeting.

7 Though the petitioner has tried to draw support from provisions of section 73 (AAA) of the said Act, however, the section does not put any embargo on her right of actively participating in the affairs of the Co-operative bank and exercise the right of voting. Rather the petitioner has exercised her right of attending and active participation in the voting by putting her signature on minutes book of the bank.

8 The next submission of the petitioner is that while opposing bail application it was noticed that other accused have actively participated in the commission of crime in question. It is to be noted that such submissions were borne out of the report opposing the bail application, which in my opinion cannot be accepted at this stage of proceedings particularly when the charge-sheets speaks about the involvement of the applicant in the crime in question and evidence to that effect is produced on record.

9 The fact remains that from the minutes of the meeting, the petitioner has attended and participated in the meeting which has

resulted into passing of such resolutions whereby amount of bank was misappropriated.

10 In the aforesaid background, the claim of the petitioner that even if the case of the prosecution as it is taken to be true against the petitioner will not disclose cognizable offence cannot be accepted.

11 Reliance placed by the petitioner on the Judgment of **K. Ramkrishna** [Cited supra] in the aforesaid background will be of hardly any assistance. There is no substance in the petition, same is dismissed.

[NITIN W. SAMBRE, J.]