Vidya Amin.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3291 OF 2016

Sudhir Vasantrao Khade & Anr. … Petitioners
vs.
Mayappa Shivaji Waware & Ors. … Respondents

Mr. Nagesh Y. Chavan, Advocate for the petitioners.
Mr. Manoj G. Patil, Advocate for respondent nos. 1 and 2.
Mrs. Rutuja Ambekar, APP for the respondent-State.

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 9th October, 2018

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 30th December, 2015 passed by the District Consumer Forum, Sangli thereby dismissing the prayer of the petitioners that their names be deleted from the Recovery Application No. 73 of 2014.

3. Respondent nos. 1 and 2 have filed Complaint no. 215 of 2010 before the District Forum, Sangli against the present petitioners, Cooperative Credit Society and other persons. It is the

case of the respondents that their amount in the Fixed Deposits-one of Rs.50,000/- and other two of Rs.60,000/- each were not returned to the respondents. In the said complaint, the present petitioner no. 1, being the Chairman and petitioner no.2, erstwhile Vice-Chairman, were included as respondent nos. 2 and 3. The Credit Cooperative Society was respondent no. 1. The District Consumer Forum has partly allowed the said Application and directed respondent no. 1-Credit Society to repay the amounts of all the three Fixed Deposits with interest and also grant compensation. In the order, the District Forum has expressly stated that in absence of evidence against respondent nos. 2 to 14, they cannot be held responsible collectively or individually for payment of this money and therefore, only respondent no. 1-Credit Society is liable to repay the entire amount. Pursuant to this order, the original complainant filed Recovery Application no. 73 of 2014 before the District Consumer Forum, Sangli. The petitioners no. 1 and 2 filed Application under section 27 of Consumer Protection Act . The present petitioners, i.e., accused nos. 1A and 1B moved Application under section 258 of Cr. P.C. for discharge that they are not to be considered as accused, as they are already exonerated from the said complaint. However, the said Application was contested by the present respondent nos. 1 and 2. The District Consumer Forum, however, turned down the request made by the present petitioners and maintained their status as accused nos. 1A and 1B.

4. The learned counsel for the petitioners has relied on the order of the Consumer Forum dated 18th February, 2011 by which the present petitioners were exonerated from their financial liability. He submitted that therefore they are not to be treated as accused and they are not liable to pay or they should not be burdened to face further litigation in the Recovery Application once they are out of the original complaint no. 215 of 2010.

5. Per contra, the learned counsel for the respondent has submitted that the petitioners were erstwhile Chairman and Vice-Chairman and they were not party initially in the original complaint. This Recovery Application is filed under section 27 of the Consumer Protection Act by the original complainant. He supported the order passed by the District Consumer Forum.

6. Perused the submissions and the impugned order. It is true

that the petitioners are absolved from the liability either jointly or in personal liability to repay the amount of fixed deposit. So they cannot be involved in the recovery proceedings in their personal capacity, as the other finding of the District Consumer Forum in the order dated 18th February, 2011 is not challenged by the respondents, i.e., original complainants. However, the term “person” is defined under Section 2(1)(m) of the Consumer Protection Act, which includes -

(i) a firm whether registered or not;
(ii) a Hindu undivided family;
(iii) a co-operative society;
(iv) every other association of persons whether registered under the Societies Registration Act, 1860 or not;

6. By the order dated 18th February, 2011, the entire liability of repayment is fixed with the Cooperative Credit Society, who is respondent no.1 in the original complaint. In this Recovery proceedings, the forum has followed Section 305 of Cr. P.C. where any Corporation or any Cooperative Society is a party, the representative can be appointed for the recovery of the amount. Thus, no interference is required in the said order of the District Consumer Forum. The present petitioners are not to be addressed as Accused nos. 1A and 1B. Their nomenclature is to

be specifically mentioned as representative of respondent-Credit Society no.1.

7. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)