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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***
***CRIMINAL APPELLATE JURISDICTION***

*WRIT PETITION NO. 5314 OF 2017*

The Rendal Sahakari Bank Ltd. Rendal. … Petitioner.

V/s.

The State of Maharashtra and Ors. ... Respondents.

Mr. S.R. Ganbavale for the Petitioner.
Mr. Y.M. Nakhwa, APP for the State.

***CORAM : S.S. Shinde, J.***

***DATE : 5th September, 2018.***

***<u>P.C.</u>*** **:-**

This Writ Petition filed by the Petitioner challenging the judgment and order passed by the learned Additional Sessions Judge, Kolhapur in Criminal Revision Application No. 16 of 2018 dated 2nd December 2017. The facts disclosing the Petition for filing the complaint before the Magistrate are as under :-

> " It is the case of the Petitioner that, to obtain loan, more than their eligibility, the Respondent Nos. 2 to 5, in connivance with the Respondent No.6, who was the

Bank Valuator, have shown the valuation of the said property on a higher side i.e. at Rs.21,50,000/- and have got the loan sanctioned. Since, the Respondents failed to repay their loan, the Petitioner initiated Section 101, M.C.S. Act, 1960, recovery proceedings. That, during the execution of the recovery certificate the Petitioner discerned that, the mortgaged property was deliberately undervalued."

2. It appears that pursuant to complaint filed by the Petitioner, the learned Magistrate directed the concerned Police Officer under Section 156(3), of the Code of Criminal Procedure to conduct enquiry. Accordingly, enquiry was conducted and report was submitted. The learned Magistrate, on scrutiny of the material on record held that there is no case made out against the Respondents and therefore, the complaint filed by the Petitioner was dismissed under Section 203 of the Code of Criminal Procedure.

3. Being aggrieved by the order passed by the Magistrate, the Petitioner filed the Criminal Revision Application before the Additional Sessions Judge, Kolhapur. Same Criminal Revision Application was also dismissed. Hence, this Writ Petition.

4. The learned Counsel appearing for the Petitioner submits that there were specific allegations of conspiracy against

Respondent Nos. 2 to 5 and also Respondent No. 6 was the Petitioner – Bank valuer. The said allegations of conspiracy were noticed by the Petitioner during the recovery proceedings and after having noted the circumstances leading to hatching the criminal conspiracy, the Petitioner complained under Sections 406, 420, 467, 468, 471, 120-B r/w. 34 of the Indian Penal Code ought to have been appreciated by the Magistrate that Respondent Nos. 2 to 5 in collusion with Respondent No.6 with an intention to obtain more loan amount prepared the fraudulent valuation report. Therefore, the learned Counsel appearing for the Petitioner relying upon the pleadings in the Petition grounds taken therein submits that the Petition may be allowed.

5. I have carefully perused the reasons assigned by the learned Magistrate while rejecting the complaint filed by the Petitioner and also the Criminal Revision Application by the Sessions Court. Both the Courts have recorded findings on facts that the material brought on record by the Petitioner is not sufficient to constitute the offence under aforesaid Sections as alleged by the Petitioner. It appears that the Petitioner, pursuant to obtaining recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, has recovered the amount from the Respondent Nos. 2 to 5. The Revisional Court has taken a note of arguments advanced by the learned Counsel for Respondent Nos. 2

to 5 that since they filed the criminal complaint against the Petitioner valuating their property, to give counter-blast to said criminal complaint, the Petitioner filed the complaint before the Magistrate. The Sessions Court has also recorded the finding of fact that before disbursing loan in favour of Respondent Nos. 2 to 5, all the formalities were completed including verifying the loan proposal by following due procedure and also resolution by the members of the Managing Committee of the Petitioner. It is also observed by the Sessions Court that it is only after finding out genuineness of the documents, the Petitioner – bank has sanctioned and disbursed the loan to the Respondents.

6. If the reasons/findings recorded by the Magistrate and Sessions Court are examined in the light of pleadings and grounds in the Petition and other documents placed on record by the Petitioner, this Court is of the opinion that the reasons assigned by both the Courts below are inconsonance with the material which was placed on record before the said Courts and also view taken was plausible and reasonable.

7. In that view of the matter, no case is made out for interference in the impugned orders. Hence, the Writ Petition is devoid of any merits and accordingly, stands rejected.

***(S.S. Shinde, J.)***

Jyoti Prakash Pawar
Digitally signed by Jyoti Prakash Pawar
Date: 2018.09.07 16:30:09 +0530