IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.506 OF 2005

1. Narayan S/o Deorao Pawar,
Age 45 years, Occu. Service,
R/o C/o the Nanded D.C.C. Bank
Ltd., Station Road, Nanded Tq.
Dist. Nanded.

2. Prakash Bhagwanrao Pawar,
Age 35 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
branch Hadgaon Tq. Hadgaon Dist.
Nanded.

3. Vishwambhar Digambar Phajge
Age 51 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
branch Barbada, Tq. Biloli
Dist. Nanded.

4. Bhanudas Kishanrao Munde,
Age 41 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
branch Kandhar, Tq. Kandhar,
Dist. Nanded.

5. Shankar Gunaji Lokre,
Age 51 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
Station Road, Nanded,
Tq. & Dist. Nanded.

6. Balaji Prabhakar Zillewar,
Age 46 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
Nanded, Tq. & Dist. Nanded. ...Petitioners

Versus

1. The State of Maharashtra,
Through Police Station Shivajinagar,
Nanded Dist. Nanded.

2. Shivkumar Shankar Tale,
Age 29 years, Occu. Service,

R/o Yeshwantnagar, Nanded
Dist. Nanded. ...Respondents

WITH
CRIMINAL WRIT PETITION NO.86 OF 2006

1. Narayan S/o Deorao Pawar,
Age 45 years, Occu. Service,
R/o C/o the Nanded D.C.C. Bank
Ltd., Station Road, Nanded Tq.
Dist. Nanded.

2. Prakash Bhagwanrao Pawar,
Age 35 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
branch Hadgaon Tq. Hadgaon Dist.
Nanded.

3. Vishwambhar Digambar Phajge
Age 51 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
branch Barbada, Tq. Biloli
Dist. Nanded.

4. Bhanudas Kishanrao Munde,
Age 41 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
branch Kandhar, Tq. Kandhar,
Dist. Nanded.

5. Shankar Gunaji Lokre,
Age 51 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
Station Road, Nanded,
Tq. & Dist. Nanded.

6. Balaji Prabhakar Zillewar,
Age 46 years, Occu. Service,
R/o C/o Nanded D.C.C. Bank Ltd.,
Nanded, Tq. & Dist. Nanded. ...Petitioners

Versus

1. The State of Maharashtra,
Through it's Secretary,
Co-operation and Textile Department,
Maharashtra State Mantralaya, Mumbai-32.

2. The Police Station, Shivajinagar
Nanded, Taluka and District Nanded
Through it's Police Inspector.
(Copies to be served to the Public Prosecutor
High Court of Judicature of Bombay,
Bench at Aurangabad for Resp. 1 & 2)

3. Shivkumar Shankar Tale,
Age 29 years, Occu. Service,
R/o Yeshwantnagar, Nanded
Dist. Nanded. ...Respondents

...

Mr. P.D. Suryawanshi h/f Mr. K.J. Suryawanshi, Advocate for Petitioners.
Mr. A.R. Kale, APP for the Respondent-State.
Mr. A.N. Sabnis h/f Mr. V.D. Gunale, Advocate for Respondents.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 06th DECEMBER, 2019.

JUDGEMENT:-

. These petitions are filed by the employees of the Nanded District Central Co-operative Bank Ltd., Nanded (for short 'N.D.C.C. Bank') challenging the order passed by the learned Chief Judicial Magistrate, Nanded in R.C.C. No.551 of 2005 thereby directing investigation under Section 156(3) of the Criminal Procedure Code, confirmed in Criminal Revision No.85 of 2005 and seeking quashing of R.C.C. No.551 of 2005 registered on the basis of Crime No.85 of 2005 of Shivajinagar Police Station, Nanded.

2. Facts in nutshell are as follows:

R.C.C. No.551 of 2005, a private complaint was lodged by Shivkumar Shankar Tale against six employees of N.D.C.C. Bank alleging that on 15.05.2005, there was a pooja in the house of the complainant, at that time accused persons forced their entry in the house of the complainant and seized household articles and gold ornaments weighing 17 to 18 tolas, thereby committed offence under Section 379 and 395 of the Indian Penal Code. Though the complainant approached the police authorities, they failed to register any offence. Hence, he prayed for issuance of direction under Section 156(3) of the Criminal Procedure Code with registration of the crime and investigation into the same. The learned Trial Court vide order dated 08.07.2005 directed registration of offence under Section 448 and 379 r/w 34 of the Indian Penal Code against the accused persons and directed to submit the report under Section 173 of the Criminal Procedure Code. The revision filed against the said order by the petitioners-accused was dismissed.

3. It is the case of the petitioners that, the petitioners are working on various posts i.e. Manager (Administration), Inspector, Branch Inspectors, Manager (Recovery Section) etc in N.D.C.C. Bank. One Shankar s/o Vishwanath Tale, who is the father of respondent no.2 is staying jointly with his two sons namely Shivkumar and Sachin. Shankar s/o Vishwanath Tale and Sachin s/o Shankar

Tale (hereinafter referred to as ‘the borrowers’) applied to N.D.C.C. Bank through Seva Sahakari Society Ltd., Harbal Tq. Kandhar Dist. Nanded (for short ‘the village level society’) for medium term loan of Rs.4,96,100/- for construction of water pipe line and for purchasing electric motor for irrigation purposes. It is necessary to mention here that, at the relevant time Shankar s/o Vishwanath Tale was himself the Chairman of the village level society. Shankar and his two sons were share holder members of the said village level society. A loan of Rs.3,30,000/- was sanctioned to the borrowers on 02.06.1999 and after executing necessary documents, the loan was disbursed in favour of the borrowers through village level society. The borrowers executed declaration in respect of their landed property on 15.06.1999, in favour of the village level society in prescribed proforma as per Section 48-A of the Maharashtra Co-operative Societies Act, 1960 (for short ‘the M.C.S. Act’) and accordingly the entries were taken in the revenue record etc.

4. On failure of the borrowers to repay the loan, the N.D.C.C. Bank obtained certificate under Section 101 of the M.C.S. Act to the tune of Rs.6,05,880/-, which includes Rs.3,30,210/- towards principle amount and Rs.2,75,670/- towards interest. The certificate was referred to the

recovery officer i.e. petitioner no.4, who by following the procedure under Rule 107, started the recovery process. On failure of the borrowers to repay the amount, with a view to execute the recovery certificate, the recovery officer sought police protection, which was granted to him at the time of attachment of movable and immovable properties of the borrowers. On 15.05.2005, the recovery officer along with the other officers of the N.D.C.C. Bank and 3 police constables went to the house of the borrowers situated at Yeshwantnagar, Nanded and attached movable and immovable properties of the borrowers. Panchnama to that effect was prepared, so also the inventories. After attachment of the movable properties, the petitioners submitted report to that effect to the Police Station Shivajinagar on the same day annexing copies of the panchnama, the list of attached movable goods, spot notice, schedule 3 and recovery certificate etc.

5. After the attachment, borrowers deposited some amount towards repayment of loan. On deposit of the said amount, the N.D.C.C. Bank vide letter dated 24.09.2005, informed the borrowers to take back the attached movable properties from the Head Office of the bank. However, the borrowers have not claimed the same till the date of filing of the petitions. Shivkumar S/o Shankar Tale filed private

complaint, R.C.C. No.551 of 2005 alleging the commission of offence under Sections 395, 457, 504, and 506 r/w 34 of the Indian Penal Code. The complainant alleged that the attached house property at Yeshwantnagar had come to his share in family arrangement and his father and brothers have no concern with the said property. Present petitioners-accused forcibly entered in the house and have stolen the household articles and golden ornaments etc. As noted earlier, the learned Trial Court issued directions under Section 156(3) of the Criminal Procedure Code.

6. Heard learned counsel for the petitioners and the learned counsel appearing for the original complainant and the learned APP. Perused the petitions memo and the annexures annexed thereto with the assistance of learned counsel for the respective parties.

7. The learned counsel for the petitioners argue that the learned Magistrate was not justified in directing investigation under Section 156(3) of the Criminal Procedure Code. The learned Trial Court ought to have taken into consideration the facts of the case and ought to have accepted their contention that the prosecution is lodged only with a view to give counter blast to the recovery proceedings initiated by the N.D.C.C. Bank. The impugned

proceeding is lodged with a view to stall recovery proceeding, which is initiated at the instance of borrowers, who committed default in repayment of loan amount. Thus, continuation of the proceedings is an abuse of process of law. It is further submitted that the complaint does not make out offence under Section 379 of the Indian Penal Code. There is no material to show that the Bank Officers during the course of recovery shared common intention to commit theft. Reliance is placed in the case of "***Khan Hasib Ibrahim Vs. Suresh Haribhau Kapare and Another, 2013(6) LJSOFT 34***". The learned counsel, therefore, prays for quashing of the impugned order and further proceedings of R.C.C. No.551 of 2005.

8. The learned APP supports the impugned order stating that the N.D.C.C. Bank officers have exceeded their limits by forcibly taking away the movable articles and therefore, all the ingredients of Section 379 are made out.

9. The learned counsel representing the informant vehemently opposed the prayer stating that, on Sunday the attachment of movable and immovable properties was effected which shows the malafides on part of the bank authorities. The house belonged to the informant and not the borrowers and the same could not have been attached

towards recovery of the borrowers, therefore, he states that the ingredients of Section 379 are clearly made out and the matters are not liable to be quashed under the extra ordinary jurisdiction under article 227 of the Constitution of India r/w Section 482 of the Criminal Procedure Code. Hence, he prays for dismissal of the criminal writ petitions.

10. It is not disputed that the loan was obtained by the borrowers and there was a default in repayment. Certificate under Section 101 of the M.C.S. Act was issued and execution in pursuance of the same was initiated. In execution of the said certificate, movable and immovable properties of the borrowers were attached. It is a matter of record that the borrowers have sworn an affidavit on 04.11.2019 copy of which is placed on record, stating that they have obtained loan of Rs.3,30,000/- for electric motor and pipe line and the said scheme is operational. They have undertaken to repay the loan amount along with interest and in case they fail to do so, then their agricultural land at Harbour village, so also their residential house at Yeshwantnagar, Nanded and the movable properties can be legally attached by the N.D.C.C. Bank. It is also not disputed that on deposit of part of the amount towards the recovery certificate, the N.D.C.C. Bank has informed the borrowers to take away their properties. It is also not disputed that at the

time of attaching the properties of the borrowers, three police constables were present on the said spot and in their presence the action of attachment was completed. It is pertinent to note that three police constables are not arrayed as accused by the complainant, it is therefore difficult to accept the allegations of the complainant that the Bank Officers have committed theft of movable properties at the time of attachment.

11. There is no dispute that the immovable property attached stands in the name of borrowers. It is also a matter of record that the fact of attachment of movable and immovable properties was informed to the concerned police station, who provided police support on the same day on which movable properties were attached. The borrowers on 30.05.2005, deposited an amount of Rs.1,20,000/- and agreed to deposit Rs.2,10,000/- in two months thereafter. The bank on 24.09.2005, informed the borrowers that the borrowers have deposited the amount which is more than the amount which would have been received after selling the movable properties, the borrowers may take away all the movable properties attached by the bank officers. It is also a matter of record that the house property at Yeshwantnagar which was attached stands in the name of the borrower Shankarrao Tale and his wife Sindhutai Tale. It is also not

disputed that the borrower is residing jointly in the family along with his two sons Sachin and Shivkumar (informant).

12. It is necessary to mention that the borrowers have failed in their challenge to the certificate issued under Section 101 and subsequently they have cleared the loan amount.

13. Taking into consideration the facts and circumstances of the case and the record, it is obvious that the private complaint was lodged only with a view to pressurize the bank authorities and to prevent them from executing the recovery certificate issued against the borrowers. The proceeding was initiated at the instance of the borrowers by the informant leveling all the sorts of imaginary allegations. The allegations made in the complaint in the facts of the present case, even if they are taken at their face value and accepted in its entirety, do not prima facie constitute any offence or make out a case against the petitioners. Even if the uncontroverted allegations made in the complaint are taken as it is, they do not disclose commission of offence under Section 379 of the Indian Penal Code against the petitioners. In the peculiar facts of the present case the allegations made in the complaint are so absurd and inherently improbable, on the

basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused / present petitioners.

14. The learned counsel for the petitioners was right in placing reliance on the ratio in the case of ***"M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another, 2009 Cri.L.J 4642"***, wherein loan was taken from the bank and the borrowers were not repaying the loan. The bank officers appropriated the amount from the fixed deposits of guarantors as per agreement of guarantee. The borrowers and the guarantors were duly informed. On lodging a complaint by the guarantor against bank officers under Section 409, 422, 426 and 120B of the Indian Penal Code, the Hon'ble Apex Court quashed the complaint holding that the bank officers were only taking steps in discharge of their duties to realize the amount due to the bank from the borrowers. Hence, by placing reliance on 'Pepsi Foods Ltd', the Hon'ble Apex Court quashed the complaint.

15. A useful reference of 'Khan Hasib Ibrahim's case (cited supra) can be made here. In that case, there was a higher purchase agreement and finance was taken for purchasing two trucks. On default committed by the borrowers, the vehicles were repossessed by the finance

company under the right given to it under the loan agreement. A complaint filed by the brother of the borrower against the finance company officers was held to be after thought and it was observed that it was lodged only with a view to give counter blast to the action taken by the finance company. Hence this Court quashed directions for investigation under Section 156(3) of the Criminal Procedure Code, as the same being misuse of process of law. The ratio of that case is applicable to the facts of the present case.

16. Useful reference of observations of the Hon'ble Apex Court in the case of "***Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, (1998) 5 SCC 749***", can be made wherein, the Hon'ble Apex Court held in Para-28 as under:

> *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning*

> *of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

17. In the light of above observations, this case can be said to be an example of non-application of mind on the part of the learned Magistrate, who has committed an error in issuing directions to register an offence under Section 156(3) of the Criminal Procedure Code. The learned Magistrate ought to have scrutinized the contents of the private complaint, so also the documents placed on record in proper perspective. In view of the fact that the petitioners being bank officials were trying to effect the recovery in accordance with the procedure prescribed by law and initiated action of attachment of property, which they are entitled to take for recovery, no ingredients of offence punishable under Section 379 of the Indian Penal Code can be said to be made out. The learned Magistrate has misdirected himself in giving directions to register FIR and to investigate into the matter and to file charge sheet.

18. In view of the discussion made herein-above, since the proceedings against the petitioners is filed with a view to give counter blast to the recovery initiated by the

N.D.C.C. Bank and with a view to pressurize the Bank Officers and to stall the recovery, the same is an abuse of process of law and Court. Therefore, the proceedings are liable to be quashed and set aside. Hence, the following order:

ORDER

I) The impugned order passed by the learned Magistrate in R.C.C. No.551 of 2005 thereby directing investigation under Section 156(3), is hereby quashed and set aside.

II) The proceedings of R.C.C. No.551 of 2005 and Crime No.152 of 2005 registered at Shivajinagar Police Station, Nanded are hereby quashed and set aside.

III) Rule is made absolute in the above terms.

IV) There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)