

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.980 OF 2018

Milind Vidyasagar Ghatе,
Age : 56 years, Occu. Service,
R/o 75/12, BPCL Staff Quarters,
Gokuldhаm Goregaon (East),
Mumbai

PETITIONER

VERSUS

1. State of Maharashtra
2. Chаlisaon Peoples Cooperative
bank Ltd., Chаlisaon, Taluka
Chаlisaon, District Jalgaon

RESPONDENTS

Mrs. Rashmi S. Kulkarni, Advocate for the petitioner
Mr. B.V. Virdhe, A.P.P. for respondent No.1/State
Mr. P.S. Gaikwad, Advocate for respondent No.2

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 10th OCTOBER, 2019

PRONOUNCED ON : 5th DECEMBER, 2019

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned A.P.P. waives service for the respondent No.1/State. Learned Advocate Mr. P.S. Gaikwad waives service for the respondent No.2. With the consent of both

the sides, the matter is heard finally at the stage of admission.

3. The petitioner is invoking the powers of this Court under Article 227 of the Constitution of India and seeking discharge under Section 239 of the Code of Criminal Procedure (“Cr.P.C.”, for short) from Regular Criminal Case No.328/2009 pending on the file of the learned Judicial Magistrate First Class, Chalisgaon, District Jalgaon, wherein he has been arrayed as an accused No.4 in connection with the offences punishable under Sections 406, 408, 409, 420, 465, 467, 471, 201 read with Section 34 of the Indian Penal Code (“IPC”, for short).

4. A Statutory Auditor of the Chalisgaon Peoples Cooperative Bank Ltd., Chalisgaon (hereinafter referred to as “bank”) by name Narayan Druptrao Gadhekar lodged the FIR with Chalisgaon police inter alia alleging that the Chairman, Directors, Managers, staff and few borrowers have indulged in forgery, fabrication of record and have misappropriated an amount in aggregate of Rs.5,51,23,000/- of the bank. He alleged that the Chairman and the Directors of the bank disbursed loans to their near and dear ones without obtaining necessary security against the loan. So far as the petitioner is concerned, he alleged that he along with his brother Ajit were the partners of a firm namely M/s Uma Agencies. Ajit applied for a loan of Rs.10,00,000/- with the bank on 31.03.2004 for and on behalf of the partnership firm. The loan was sanctioned on the same day and without obtaining any security, it was also disbursed and thus, on the date of the

filing of FIR, the firm was due and payable to the bank an amount of Rs.19,01,761/-.

5. The petitioner filed an application (Exh-236) seeking discharge under Section 239 of the Cr.PC. The learned Magistrate, by the order dated 28.10.2014, rejected the application. The petitioner challenged that order by filing Criminal Revision Application No.237/2014. By the impugned judgment and order, the learned Sessions Judge rejected the Revision. Hence, this Writ Petition.

6. The learned Advocate for the petitioner submitted that though the petitioner was a partner in the partnership firm M/s Uma Agencies, he was inducted in the partnership when he was barely nine years old. His brother Ajit and the mother were the two active partners. He was residing in Mumbai since 1997 and was in a permanent employment. He was never concerned with the activities of the firm which was running a petrol pump at Chalisgaon. He would submit that even he resigned and stood retired from the firm with effect from 01.04.2004 and necessary information was also given to the Registrar of Firms.

7. The learned Advocate would then submit that though Ajit had applied for the loan stating it to be for and on behalf of the partnership firm, there was no record to show that the firm had derived any benefit or had actually received the money. Assuming that Ajit had declared that he was

applying for loan for and on behalf of M/s Uma Agencies, that would not be binding on the firm. He was not directed or authorized to avail of the loan for and on behalf of the firm. In his application on the basis of which the loan was sanctioned to him, it has been clearly mentioned that he wanted the money for construction of a complex and his such need had no nexus with the business of the partnership firm. Therefore, at the most, it would be a personal liability of petitioner's brother Ajit and the firm cannot be held responsible for the debt much less for any criminal liability. She would submit that after petitioner's resignation from the firm, it was continued by the remaining partners i.e. his brother Ajit and their mother for some time and after demise of mother, he continued with the business as proprietary concern with effect from 28.09.2005.

8. Thus, according to the learned Advocate, the petitioner is not at all involved in either applying for the loan or indulging in any criminal activity of defrauding the bank. Merely because the loan was applied for and on behalf of the partnership firm only a day prior to his resignation from the partnership firm, he cannot be held criminally liable to face the prosecution.

9. The learned Advocate then submitted that during his lifetime, petitioner's brother Ajit specifically acknowledged in writing his liability to repay various loans availed of by him from the bank and also he gave an undertaking to that effect to the bank on 06.07.2005. She would then point out that petitioner's brother Ajit expired in the year 2013. Considering the

liability as a pious obligation, Ajit's son accepted the liability and repaid the loan together with interest to the bank on 18.02.2016 and also obtained a no dues certificate from the bank.

10. Relying on these facts, the learned Advocate for the petitioner further submitted that under similar set of facts, another prosecution in the form of Crime No.254/2008 was initiated against the petitioner and his brother Ajit in respect of a loan of Rs.4,00,000/- obtained from the same bank with allegations about they having indulged in forgery while applying for the loan. The petitioner's stand was to the effect that he had not signed on the application for loan and his signature was forged one. It was duly confirmed by an handwriting expert. When he had applied for discharge under Section 239 of the Cr.P.C., the learned Magistrate had rejected the application and the matter had reached the Supreme Court in the form of Criminal Appeal No.511/2018. The Supreme Court has quashed the complaint by taking note of the fact that the entire amount of the loan was repaid by the son of deceased Ajit.

11. Thus, according to the learned Advocate, when even in the matter in hand the petitioner is not signatory to the application for loan and there is no other material prima facie showing that he had also taken part in the alleged misappropriation, there is no substance to frame the charge and it being groundless, he may be discharged.

12. The learned A.P.P. supported the orders passed by both the Courts below and submitted that when the two Courts below have taken a concurrent view about existence of prima facie material, this Court should not invoke the powers under Article 227 of the Constitution of India.

13. The learned Advocate for the respondent No.2, which is the bank, submitted that there is enough material to show that Ajit had applied for the loan for and on behalf of the partnership firm. In fact, he had availed of several other loans in his individual capacity as well as for and on behalf of other establishments apart from the partnership firm M/s Uma Agencies. Several other criminal cases of similar kind were initiated against him even in respect of those loan transactions. He would submit that the loan in question was specifically applied for and on behalf of the partnership firm and merely because of the fact that the petitioner resigned on the next day or that the amount of loan has been repaid with interest would not wash out the criminality. Not only the Chairman, Directors and office bearers of the bank but even the borrowers have indulged in criminal activity and have duped the bank by misappropriating the public money by disbursing loans without insisting for any security. The learned Advocate would submit that it would be a convenient plea for the petitioner now to claim discharge by feigning ignorance. When he has been a partner in the firm since the age of nine years and allowed the activities of the firm to continue till he resigned on 01.04.2004, he cannot be allowed to be heard for not being aware about the

activities of his brother Ajit, particularly when, even according to the petitioner, he was not actually taking part in the day-today affairs of the firm. The learned Advocate would then refer to the decision in the case of ***Rumi Dhar V. State of West Bengal & Anr.; 2009 AIR (SC) 2195.***

14. I have carefully gone through the papers and the orders passed by the two Courts below. The charge as against the petitioner is to the effect that he along with his brother Ajit has managed to obtain the loan of Rs.10,00,000/- without furnishing necessary security and this they have done by sharing common intention with the Chairman, Directors and officers of the bank. Taking into account the fact that the respondent No.2, which is a bank and the FIR has been lodged by its Special Auditor, one can safely proceed on the premise that he must have gone through the entire record of the bank while arriving at such a conclusion of the partnership firm having obtained the loan of Rs.10,00,000/- without furnishing security. The details thereof have been clearly narrated in the FIR.

15. It would not be out of place to mention at this juncture that it is not an isolated instance in respect of the present loan transaction. The FIR refers to various such transactions wherein number of borrowers have availed the loans without furnishing security and details of those transactions have been given in the FIR. Needless to state that taking into account the modus operandi, it cannot be a handy work of a person or two. The Chairman and Directors as well as officers of the bank must have acted in unison with the

borrowers without which it could not have been possible for so many borrowers to obtain loans in a similar fashion without furnishing securities.

16. It does appear that in fact, only the brother of the petitioner – Ajit had applied for the loan while submitting the application on 31.03.2004. Pertinently, the chargesheet also contains a letter addressed by the Manager of the bank to its Chairman of the same date wherein it has been mentioned that Ajit had submitted an application on that day requesting for a loan of Rs.10,00,000/- on behalf of M/s Uma Agencies, the partnership firm. It refers to some discussion between the Manager and the Chairman and that Ajit wanted that money for enabling him to deposit it against a loan obtained for construction of a complex which was outstanding with Jalgaon Janata Sahakari Bank. It then refers to Chairman having called the Manager to his shop and having asked him to pay the loan in the name of the firm without insisting for security of fixed deposits. This writing clearly indicates that the Chairman and the Manager have consciously, sharing a common intention with Ajit, managed to disburse the loan without insisting for any security. This prima facie shows that it is indeed a matter involving criminality.

17. According to the petitioner, he has been serving in Mumbai whereas the firm has its business at Chalisgaon and that the firm has been in existence and he was inducted therein at the age of nine years. On the date of the petition he is aged 56 years. At this juncture it cannot be believed that Ajit, who was his brother, was carrying on the activities of the partnership

firm without any consultation with the petitioner. It is also not clear as to why and how the petitioner resigned from the partnership firm on the very next day of obtaining the loan in question. It cannot be a sheer chance. Atleast there is nothing to demonstrate that it was merely a coincidence. Besides, the petitioner also has not made clear as to what prompted him to resign on the very next day. Again there is no material to show that soon after tendering resignation from the firm, at any moment during the lifetime of Ajit, who unfortunately died in 2013, when the FIR was lodged in the year 2004, he had taken any action against Ajit for obtaining such loan under misrepresentation, may be to avoid any liability.

18. Be that as it may, there is enough material to prima facie show that Ajit had obtained loan for and on behalf of the partnership firm when the petitioner was still a partner and by no stretch of imagination can it be said that the charge is groundless. The observations and the conclusions by the Magistrate and the learned Sessions Judge are plausible and I find no sufficient and cogent reason to interfere.

19. True it is that apparently, in respect of another similar transaction of obtaining loan without furnishing security and misappropriating the amount, another criminal case bearing R.C.C. No.368/2009 was also initiated against Ajit and the petitioner. It also appears that the Supreme Court has quashed that criminal case by noting that the loan was repaid and there was no signature of the petitioner on the

application for loan and that there was report of an handwriting expert to show that the signature on the application for loan purporting to be that of the petitioner was, in fact, not his. The learned Advocate for the petitioner has, therefore, requested to adopt a similar course even in the matter in hand. In support of her submission, she also placed reliance on the decisions of the Supreme Court in the cases of *Sharon Michael and Ors. V. State of Tamil Nadu and Ors. (2009)3 SCC 375* and *Binod Kumar V. State of Bihar (2014)10 SCC 663*. The learned Advocate would submit that at the most, the petitioner would be liable for repayment of the loan amount together with interest and the bank cannot be allowed to invoke criminal law to pressurize borrowers for recovery of dues.

20. At the first blush, the submission of the learned Advocate for the petitioner does seem attractive and even the decision in the case of *Sharon Michael* (supra) supports her submission. However, as has been rightly pointed out by the learned Advocate for the respondent No.2 by referring to the decision of the Supreme Court in the case of *Rumi Dhar* (supra), such repayment of entire loan is of no consequence, particularly when it is a serious matter of misappropriation of public money, wherein the Chairman, the Directors, the officers of the bank as well as the borrowers have managed to siphon of public money blatantly flouting the norms of insisting for bare minimum security. It is a systematic attempt and has to be viewed seriously. In the matter of *Rumi Dhar* (supra), the wife was seeking discharge in a case

wherein her husband was embroiled in similar allegations of availing loan by her husband by indulging in criminal offences in connivance with the bank officers. In my considered view, the petitioner's plea seeking discharge on the ground that the loan in question has already been repaid together with interest is nothing but a convenient plea and can only be refuted relying upon the decision in the case of *Rumi Dhar* (supra). There are no sufficient and cogent reasons for this Court to invoke the powers under Article 227 of the Constitution to interfere with the concurrent views of the two Courts below.

21. As far as the other crime which has been quashed by the Supreme Court in respect of R.C.C. No.368/2009, it is necessary to note that the Supreme Court has quashed that crime, firstly, by referring to the fact that there was a report of the handwriting expert in favour of the petitioner and secondly, on the ground that the loan was repaid and there was no propriety in allowing the prosecution to go on. In the matter in hand, the petitioner is not seeking any quashment and has been seeking discharge under Section 239 of the Cr.P.C., which enables an accused to claim discharge only on the ground that it is groundless. The Magistrate and the Sessions Court have demonstrated as to how on the basis of the material before them, the charge cannot be said to be groundless. I find no sufficient and cogent reason but to subscribe to the concurrent view taken by the two Courts below and do not find that the charge to be groundless.

22. The Writ Petition is dismissed. The interim relief granted stands vacated. The Rule is discharged.

[MANGESH S. PATIL]
JUDGE

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