

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

CRIMINAL WRIT PETITION NO. 2131 OF 2019

Mr. Mahesh Pralhad Salunke	]	
Having Address at Sakharwadi,	]	
Taluka Phaltan District,	]	
Satara, Pin Code : 415 522	]	...Petitioner (Orig. Acc. No. 2)

Versus

- | | | |
|-----------------------------------|---|---|
| 1. Bharati Sahakari Bank Ltd., |] | |
| Bharati Vidyapeeth Bhavan Branch, |] | |
| L.B.S., Road, 13, Sadashiv Peth, |] | |
| Pune 411 030 |] | ...Respondent No. 1.
(Orig. Complainant) |
| 2. The State of Maharashtra |] | ...Respondents |

WITH

CRIMINAL WRIT PETITION NO. 2450 OF 2019

Mr. Dhananjay Pralhad Salunke	]	
Having Address at Sakharwadi,	]	
Taluka Phaltan District,	]	
Satara, Pin Code : 415 522	]	...Petitioner (Orig. Acc. No. 1)

Versus

- | | | |
|-----------------------------------|---|---|
| 1. Bharati Sahakari Bank Ltd., |] | |
| Bharati Vidyapeeth Bhavan Branch, |] | |
| L.B.S., Road, 13, Sadashiv Peth, |] | |
| Pune 411 030 |] | ...Respondent No. 1.
(Orig. Complainant) |
| 2. The State of Maharashtra |] | ...Respondents |

Mr. Uday Babade i/by. Mr. Jeetendra H. Ramugade for Petitioner in WP No. 2131/2019.

Mr. Balwant Salunke i/by. Ms. Priyanka G. Chandaliya for Petitioner in WP No. 2450/2019.

Mrs. M.R. Tidke, APP for Respondent No. 2 - State in both petitions.

Mr. Vijay D. Patil a/w. Mr. Yogesh Patil for Respondent No. 1.

CORAM : S.S. SHINDE, J.
RESERVED ON : 06th AUGUST 2019
PRONOUNCED ON : 16th AUGUST 2019

JUDGMENT

1. Since both the Petitions are arising out of order dated 05th February 2019 passed by the Learned Judicial Magistrate First Class, 4th Court, Pune in CC No. 155/2019 both the Petitions are heard together and being disposed of by this common judgment.

2. These petition takes an exception to the order dated 05.02.2019 of issuance of process passed by the Ld. Judicial Magistrate First Class, 4th Court, Pune in CC No. 155/2019.

3. Advocate Mr. Uday Babade appearing for the Petitioner in Writ Petition No. 2131/2019 submits that Mr. Dhananjay P. Saluke had applied for the mortgage loan with the Respondent No.1 - bank by mortgaging his property i.e. Nisarg Executive of whom he is the Proprietor. The said Dhananjay P. Saluke also obtained registration

certificate in the name of Nisarg Executive as proprietorship. The said Dhananjay P. Salunke also having Form ST-2 issued by Central Board of Excise and Custom, Ministry of Finance - Department of Revenue in the name of Nisarg Executive. He is also having license to run the business in the name of Nisarg Executive as a Proprietor issued by Sub Divisional Magistrate Phaltan Sub. Div. Phaltan. Learned counsel submits that Petitioner had never obtained the loan from the Respondent No. 1 - Bank and it is Mr. Dhananjay P. Salunke who had obtained mortgage loan in the capacity of proprietor Ms. Nisarg Executive and not by the Petitioner. Petitioner has neither concern with the loan obtained by the said Dhananjay P. Saluke nor he is signatory to the cheque, hence, the order passed by the Trial Court of issuance of process deserves to be quash and set aside.

4. Learned counsel also invites attention of this Court to the grounds taken in the petition and submits that, the property of the Petitioner has been seized under the provisions of SARFEASI Act, 2002 therefore, relying upon the pleadings in the Petition grounds taken therein learned counsel appearing for the Petitioner submits that Petition deserves to be allowed.

5. Advocate Mr. Balwant Salunke appearing for the Petitioner in Writ Petition No. 2450/2019 submits that Petitioner is the borrower who borrowed the loan from the Respondent No. 1 - Bank by mortgaging the property. He further submits that, Petitioner orally requested the Respondent - Bank that the Petitioner is facing certain financial crisis therefore, he is not in a position to pay the said installments but will clear the same at the earliest meanwhile not to take any coercive action against him. But the Respondent - Bank refused to accept the oral request of the Petitioner and issued a Notice under Section 13(2) of the SARFEASI Act demanding loan amount from the petitioner. Once again Respondent - bank issued another notice under Section 13(4) of the Act demanding loan amount from the Petitioner. Thereafter, Petitioner immediately in the months of September, 2018 paid an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) in the said loan account.

6. Learned counsel further submits that, inspite of making the payment and showing bonafide intention of making payment the Respondent - Bank did not stop here nor they had given further time to the Petitioner for making payment but they proceed further by taking symbolic possession over the properties of the petitioner. Respondent -

Bank had already initiated action under SEARFEASI Act against the Petitioner and also obtained the symbolic possession over the properties of the Petitioner to secure their loan amount and therefore, the question of depositing the said cheque which was as a security towards the loan amount does not arise. Thereafter, Respondent - Bank had also made an application before the Collector to obtain the physical possession of the Petitioners property, and further Respondent No. 1 Bank is also proceeding with the sale of the Petitioner's property. Respondent - bank deposited the said cheque which was as a security towards the loan amount for realization, but the said cheque was dishonoured with the banker's memo stating that the "Fund Insufficient". Thereafter, Respondent filed the complaint bearing CC No. 155/2019. Therefore, relying upon the pleadings in the Petition, grounds taken therein learned counsel appearing for the Petitioner submits that Petition deserves to be allowed.

7. Advocate Vijay D. Patil appearing for the first Respondent invites attention of this Court to the affidavit in reply filed in both the Petition and made following submissions:

Petitioner alongwith his brother Mr. Dhananjay Pralhad Salunkhe upon an application made by them had requested to the Respondent - Bank for financial assistance by way of business loan to take over loan of Bank of Maharashtra, Satara Branch. Accordingly, in pursuance of security documents executed by the Petitioner as well as his brother the Respondent - Bank sanctioned a total loan amount of Rs. 12,50,00,000/- vide 2 different loan Account nos. Business TL/104064 and Business TL/104065. Petitioner alongwith his brother for obtaining the aforesaid loan have also executed and registered a mortgage deed with the Respondent Bank. furthermore, the Petitioner also has given a letter of lien and set off to the Respondent - Bank. Thus, considering the said documents it is crystal clear that the Petitioner was co-borrower with Mr. Dhananjay P. Salunkhe while obtaining the loan from the Respondent - Bank, and hence there is no substance in the contention of the Petitioner that, it was only Mr. Dhananjay P. Salunkhe who had taken the loan from the Respondent - Bank and the Petitioner was just a guarantor to the said loan.

8. Learned counsel further submits that, for repayment of the aforesaid loan the Petitioner has given the disputed cheque in question, from the account of his brother Mr. Dhananjay P. Salunkhe. While giving the disputed cheque in question the Petitioner had also addressed a letter dated 22.10.2018 to Bank stating that cheque is being issued for paying the installment of the loan accounts. Petitioner alongwith Mr. Dhananjay P. Salunkhe had issued the cheque for discharging of their legal dues, caused the dishonour of the cheque thereby neglecting to pay the same and thus, committed an offence u/s. 138 of the Negotiable Instrument Act. He further submits that, contention of the Petitioner that the Petitioner has not received any legal / demand notice from the Respondent - Bank in respect of the dishonoured cheque is not true and correct, hence denied by the Respondent - Bank. It is submitted the said legal / demand notice sent by the Respondent - Bank to the Petitioner were returned with a remark stating "Refused". Therefore, learned counsel appearing for the First Respondent prays that these petition may be rejected.

9. Heard learned counsel for the Petitioners and first respondent at length. With their able assistance perused the pleadings

in the Petitions annexures thereto and also the reply filed by the first Respondent. It is not necessary for this Court to give elaborate reasons. Suffice it to say that, the documents placed on record by the Petitioners and also by the Respondent itself would indicate that, the application filed for obtaining the loan from the Respondent - Bank was joint application on behalf of the Petitioners. Account details show names of both the Petitioners, the notices are also given by the Respondent - Bank to both the Petitioners. There are documents, *prima facie* showing that the loan was disbursed in favour of both the petitioners. There are other documents placed on record by the Respondent - Bank which shows that, there was joint prayer of the Petitioners for obtaining loan. In that view of the matter the order passed by the Magistrate is legally sustainable.

10. The contention of the counsel appearing for the Petitioners that, the proceedings under the SARFEASI Act are pending and properties are seized and therefore, the present proceedings cannot proceed further and deserves to be quashed, has no any basis. Petitioners have not brought to the notice of this Court any legal provisions/ impediment for proceeding with the complaint filed by the Respondent - Bank due to pendency of proceeding under the

SARFEASI Act. The averments in the complaint would clearly demonstrate that, the alleged offences are disclosed.

11. While exercising writ jurisdiction and inherent powers under Section 482 of the Cr.P.C, it is not desirable to undertake the exercise of appreciation of evidence. In this respect, it would be gainful to make reference to the judgment of Hon'ble Supreme Court in the case of **State of Bihar and anr v/s. K J D Singh** reported in **1993 (41) BLJR 1401** and a judgment of the Delhi High Court in the matter of **Ambica Plastopack Pvt. Ltd and anr. v/s. State and anr.** in Cri. M C No.2698 of 2011 decided on 01/11/2013. The question before the Apex in K J D Singh's case (supra) was, whether the criminal proceedings can be quashed even before the commencement of the Trial. Paragraph 3 of the said judgment of the Apex Court is relevant. The relevant excerpt of the said paragraph 3 is reproduced herein under :

“The inherent power under Section 482 has to be exercised for the ends of the justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial. After a review of catena of authorities, Pendian, J. in Janta Dal v/s. H S Chowdhary (supra) has deprecated the practice of staying criminal trials and police investigations except in exceptional cases and the present case is certainly not one of these exceptional cases.”

The Delhi High Court in **Ambica Plastopack Pvt. Ltd's** case (supra) in paragraph 10 of the judgment has referred a decision of the said Delhi High Court in another case i.e. **Rajesh Aggarwal** and held as under :-

*“In **Rajesh Aggarwal v/s. State, 2010 (171) DLT 51**, this Court noted that the High Court is flooded with petitions under Section 482 Cr.PC for challenging the summoning order passed by the Magistrate under Section 138 of the Negotiable Instruments Act. This Court further noted that the accused rush to the High Court on mere passing of summoning order and are successful in halting the proceedings before the Magistrate on one or the other ground while the kind of defence raised by the Petitioners is required to be raised before the Magistrate at the very initial stage as per the law.”*

12. It appears that before passing the impugned order the Magistrate has followed the procedure as contemplated under Sections 200 and 202 of Cr.P.C, and thereafter issued summons under Section 204 of the Cr.PC. No case is made out to cause interference in the impugned orders, hence petitions are devoid of any merits and same stands rejected.

(S.S. SHINDE, J.)