

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5428/2019

MADHUKAR RAMCHANDRA CHAVAN PETITIONER.

VERSUS

THE STATE OF MAHARASHTRA AND ANR..... RESPONDENTS

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Mr.R.V.Bansode, Advocate for the Petitioner.

Mr.S.V.Gavand,APP for State.

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CORAM : A. M. BADAR, J.

DATE: 7TH FEBRUARY 2020.

P.C.:

1. Heard learned counsel for the petitioner/original accused. In this petition, the petitioner/original accused is challenging proceedings initiated at the instance of respondent no.2 herein/original complainant for offence punishable under Section 138 of the Negotiable Instruments Act.

2. Learned counsel for the petitioner/original accused argued that the petitioner himself is the member of complainant Cooperative Credit Society and the Society is meant for welfare of its members. It is further urged that agricultural land of petitioner came to be mortgaged with respondent no.2/original complainant for obtaining loan. Learned counsel further argued that the respondent no.2 Society has also initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960, (the 'M.C.S.Act' for short) before the Assistant Registrar, Co-operative Societies for recovery of entire amount of loan. My attention is drawn to the application under Section 101 of the M.C.S. Act. With this, it is argued that when proceedings for recovery of loan are already initiated, respondent no.2/original complainant was not justified in initiating the prosecution for offence under Section 138 of the Negotiable Instruments Act against petitioner/original accused. It is further contended by the learned counsel for the

petitioner/original accused that the complaint is not supported by the Resolution of the Cooperative Credit Society and therefore, same is not maintainable. To support this contention, reliance is placed on the the judgment in the matter of **Mrs.Alka Toraskar Vs. The Vaishya Urban Cooperative Credit Society, 2011 ACD 1419(BOM).**

3. None appeared for respondent no.2 despite service.

4. I have considered the submissions so advanced, so also perused the material placed on record.

5. The complaint contains averment that it is filed on behalf of Cooperative Credit Society by Mr.Anmol Ashok Kshirsagar, Recovery Officer. It is averred in paragraph 1 of the complaint that the Co-operative Credit Society has delegated necessary powers to the complainant for lodging the complaint and for prosecuting the same.

6. In this view of the matter, contention of learned counsel for the petitioner that there is no such Resolution passed by the complainant Society to prosecute the petitioner herein amounts to defence of the petitioner which is required to be considered at the time of the trial of the complaint.

7. Similarly, civil action for recovery of amount has no bearing on prosecution in the offence punishable under Section 138 of the Negotiable Instruments Act. Complaint is for prosecuting accused for offence allegedly committed by him and for sentencing him appropriately. These two actions are totally independent and separate.

8. In the result, the petition as such is devoid of merits, therefore, dismissed.

9. Needless to mention that all the observations made are prima facie in nature and shall not have bearing on the trial.

(A. M. BADAR, J.)