

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION 1028 OF 2019

Sandip s/o. Dayaram Bundeale,
 aged 42 yrs, Occ. Service,
 r/o.Dalfail, Khamgaon,
 Tq. Khamgaon, Dist. Buldhana

..... **PETITIONER**

...V E R S U S...

Buldana District Central Co-opp.Bank Ltd,
 Brnach – Pimpalgaon Raja,
 Through its Branch Manager,
 Dharmapal Madhukar Surwade,
 Aged about – Adult, Occ. Service,
 R/o. Shegaon, Tq.Shegaon,
 Dist. Buldana

... **REESPONDENT**

 Shri A.S. Siddiqui, counsel for petitioner.
 Shri A.P. Wachasunder, counsel for respondent.

CORAM: ROHIT B. DEO, J.
DATE :07.12.2020

ORAL JUDGMENT:

With consent, the Petition is finally heard.

2. The challenge is to the order dated 7.10.2019,
 whereby and whereunder the Revision preferred by the petitioner
 – borrower challenging the order of issuance of process dated

23.1.2018, passed by the learned Judicial Magistrate First Class - Court 5, Khamgaon, in Summary Criminal Case 1808/2017, is rejected.

3. I have heard the learned counsel Mr. A.S. Siddiqui and Mr. A.P. Wachasunder for the petitioner and the respondent, respectively, and with their assistance, the basic record is perused.

4. One of the grounds which was raised in the Criminal Revision preferred before the learned Sessions Judge was that the complaint was incompetently instituted. The ground is predicated on the assertion that the Board of Directors of the Bank ceased to function in view of order dated 18.9.2013 passed in exercise of power under section 77-A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the "Act").

5. The complaint is instituted on behalf of the Bank by Mr. Dharmpal Surwade, who is the Branch Manager and who claims to be authorized to institute the complaint on the strength of the Resolution dated 17.5.2013 passed by the Board of Directors.

6. It appears, that the case of the borrower is that the order issued under section 77-A of the Act appoints the Collector and the DDR as authorized officers and that Mr. Dharmpal Surwade was not authorized to institute the complaint relying on the 2013 Resolution. Mr. A.P. Wachasunder would emphatically refute the assertion. Mr. Wachsunder points out the Amendment to section 77-A which has come into effect on 14.2.2013 and would submit that the Resolution passed by the Board of Directors on 17.5.2013 continuous to hold the filed. Mr. Wachsunder further invites my attention to a communication-cum-certificate issued by the Chief Officer of the Bank recording that the Resolution dated 17.5.2013 has not been altered by the Board of Administrators. In this view of the matter, Mr. Wachsunder submit that there is no error whatsoever committed by the learned Sessions Judge in rejecting the Revision since the complaint was competently instituted.

7. Mr. A.P. Wachsunder may well be right. However, the ground which is specifically raised has remained untouched and the learned Sessions Judge has not given any finding either way. The order impugned, therefore, leaves a lot to be desired and cannot be permitted to hold the field. While Mr. Wachsunder did

submit that this Court may look into the issue raised, the issue is not a pure question of law and certain factual inquiry may be necessary to record a finding either way. In this view of the matter, I am not inclined to consider the issue and it would be appropriate if the matter is remanded to the learned Sessions Judge for passing fresh orders after hearing the parties.

8. The order impugned dated 7.10.2019, passed in Criminal Revision Application 20 of 2019, by learned Additional Sessions Judge, Khamgaon, is quashed and set aside.

9. Criminal Revision Application 20 of 2019 is remitted to the learned Additional Sessions Judge, Khamgaon for fresh decision in accordance with law.

10. The parties shall appear before the learned Sessions Judge on 21.12.2020. It would not be necessary for the Revisional Court to issue a formal notice.

11. The Revisional Court shall hear the parties and finally decide the revision, as expeditiously as possible, and in any event, within 30 days from the date of appearance of the parties.

Judge