IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO.413 OF 2021
WITH APPLN/2308/2021 IN WP/413/2021

DIGAMBAR SAKHARAM PAWAR
VERSUS
THE STATE OF MAHARASHTRA

Mr. R. S. Deshmukh, Senior counsel a/w G. A. Kulkarni, Advocate i/b Mr. Devang R. Deshmukh, Advocate for the petitioner
Mr. V. A. Bagal, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State

CORAM : N. R. BORKAR, J.
DATE : 14-10-2021

P. C.

. This petition takes an exception to the order dated 12-02-2021, passed by the Additional Sessions Judge, Parbhani in Criminal Revision Petition No. 125 of 2020.

2. The petitioner herein is accused No.2 in RCC No. 158 of 2012 pending on the file of Judicial Magistrate, First Class, Parbhani and is facing trial for the offences punishable under Section 467, 420, 468, 471, 409, 120(b) read with Section 34 of the Indian Penal Code.

3. The petitioner herein had filed an application for discharge in the aforesaid case. The learned Magistrate rejected the said application by order dated 15-11-2014. Against the said order of the learned Magistrate, revision petition was filed before the Sessions Court. The learned Additional Sessions Judge rejected the revision petition by the order impugned.

4. I have heard learned senior counsel for the petitioner/accused No.2 and learned APP for the respondent/State.

5. According to the prosecution, Parbhani District Co-operative Bank Ltd, Parbhani (for short 'the bank') which is constituted for development and upliftment of the farmers, at the relevant time, was implementing the beneficial schemes for the farmers such as drawing of insurance policies for them to cover the untoward incidents. According to the prosecution in the meeting dated 27-09-2010, of the Board of Directors a resolution was passed and it was resolved to take insurance policies from Future General Insurance Company as the premium quoted by the said company was lowest. By the very said resolution, the Chairman of the bank i.e. accused No.1 was authorized to complete the other formalities.

6. According to the prosecution, the accused No.1 taking benefit of the resolution dated 27-09-2010 authorizing him to

complete the formalities hatched the conspiracy with the present petitioner who was then working as Managing Director to defraud the bank and instead of executing the agreement with the Future Central Insurance Company Ltd. the accused No.1 on 14-02-2011 entered into the agreement with Aayu Care Insurance and Multi Solution Pvt. Ltd. though the said company was not even registered with Insurance Regulatory Development Authority. It is alleged that pursuant to the said conspiracy on the very same day i.e. on 14-02-2011 itself present petitioner/accused No.2 paid an amount of Rs. 66,83,100/- to the Aayu Care Pvt. Ltd. It is alleged that the accused Nos. 2 and 3 alongwith Managing Director of Aayu Care Pvt. Ltd. who is accused No.3 in the present case fabricated the documents and in all an amount of Rs. 7,41,83,100/- was paid to the Aayu Care Pvt. Ltd.

7. Learned senior counsel for the petitioner submits that at the relevant time the petitioner was working as a Managing Director and as such he was just an employee of the bank. It is submitted that though the allegations of conspiracy are leveled against the petitioner, however, there is no material to that effect on record. It is submitted that material on record will show that note was prepared by the petitioner, wherein he had specifically mentioned that the Aayu Care Pvt. Ltd. is not registered with IRDA and the said fact was brought to the notice of the Chairman and the Directors of the Bank. It is submitted that the petitioner acted in accordance with the resolution of the Board of Directors and as per

instructions of the Chairman i.e. accused No.1. It is submitted that the petitioner is no way involved in the alleged crime and he has brought back the entire amount to the bank. It is submitted that, thus, orders impugned need to be set aside and the petitioner needs to be discharged.

8. On the other hand learned APP for the respondent/State submits that without there being any resolution to take insurance policies from the Aayu Care Pvt. Ltd. The accused No. 1 with a view to defraud the bank, executed the agreement with Aayu Care Pvt. Ltd. on 14-02-2011. It is submitted that on the very same day the petitioner who was working as a Managing Director had paid Rs. 66,83,100/- to the Aayu Care Pvt. Ltd. without there being any resolution to that effect. It is submitted that in all an amount of Rs. 7,41,83,100/- was paid to the Aayu Care Pvt. Ltd. by preparing false documents. It is submitted that the courts below were thus, justified in refusing to discharge the petitioner.

9. The allegations against the petitioner are that he conspired with accused No.1 who at the relevant time was Chairman of the Bank, to defraud the bank. Whereas, according to the petitioner he acted in accordance with resolution passed by the Board of Directors and as per the instructions of the Chairman i.e. accused No.1.

10. It appears that on 27-09-2010 resolution was passed by

the Board of Directors and by the said resolution it was resolved to take the insurance policies from Future General Insurance Company Ltd. as premium quoted by the said insurance company was lowest. It further appears that by the said resolution accused No.1 was authorized to complete the other formalities. However, it appears that the accused No.1 taking benefit of said resolution on 14-02-2011 entered into the agreement with the Aayu Care Pvt. Ltd. without there being any resolution to that effect. It further appears that the said Aayu Care Pvt. Ltd. was not even registered with the IRDA. It further appears that on the very same day i.e. 14-02-2011, the petitioner who was working as a Managing Director had paid Rs. 66,83,100/- to the Aayu Care Pvt. Ltd. again without there being any resolution to that effect. If according to the petitioner, he acted in accordance with instructions of the Chairman i.e. accused No.1, then it was incumbent upon the petitioner to produce the documents to that effect on record. However, no such documents have been produced. The trial court as well as revisional court were thus, justified in refusing to discharge the petitioner. No interference is called for in the orders impugned. In the result, following order is passed.

ORDER

i. The petition is dismissed

ii. Needless to mention that the trial court shall decide the case pending before it on its own merits without being influenced by the observations if any made by the Sessions Court and this court.

iii. In view of dismissal of the writ petition, pending application does not survive and the same stands disposed of.

[N. R. BORKAR, J.]

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