

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

CRIMINAL WRIT PETITION NO.386/2019

IDBI Bank Ltd., A company incorporated and registered under the Companies Act 1956, and a company within the meaning of Section 2(20) of the Companies Act, 2013 (18 of 2013) and a Banking company within the meaning of section 5(c) under Banking Regulation Act, 1949, and having Registered Office @ Mumbai, inter alia its Branch Known As Godhni Branch, Tahsil and Distt. Nagpur its manager and Authorized Signatory Mr. Neeraj Dateer.

..... PETITIONER

// VERSUS //

1. State of Maharashtra, through Secretary, Department of Home, Mantralaya, Mumbai – 32.
2. Superintendent of Police, Wardha (Rural), Nagpur.
3. Economic Offences Wing, S. P. Wardha.
4. Incharge/SHO, Police Station, Sevagram, District Wardha.
5. Geochem Laboratories Pvt. Ltd., Office at Geo Chem House, 294, Shaheed Bhagatsingh Road, Fort, Mumbai, through its Managing Director.

.... RESPONDENTS

Shri P. V. Bansod, Advocate for petitioner.

Shri A. S. Fulzele, Addl. P. P. for the respondent nos.1 to 4.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 26/02/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

1] Heard. **Rule.** Rule made returnable forthwith.

2] Heard finally by consent of the learned counsel appearing for the parties.

3] The complainant is dissatisfied with the action so far taken by Police Station, Sevagram, District Wardha, which has registered FIR No.424 of 2018 for an offence punishable under Section 409 read with Section 34 of the Indian Penal Code against the employees of the complainant Geo-Chem company. The complaint that was lodged by Geo-Chem company was of the date of 11.07.2018. It appears that Sevagram police required some time to make preliminary investigation and that is the reason why the offence came to be registered on 12.07.2018 at 19.30 hours.

4] The allegations made in this complaint are to the effect that Geo-Chem company was a service provider to the present petitioner and that the agreement it had made with the bank was for providing service of safe custody of the goods which were agricultural produce, pledged to

the bank by its various agricultural borrowers. For such safe custody of the goods in the godown hired by the parties, fixed amount was payable to the complainant company from the petitioner bank every month. It has been alleged that when, Auditor of the company, Vinay Nagpure, visited the godown in question on 9th December 2017 for the purpose of audit, he found that the agricultural commodities that were stored at the godown, were in deficit and he found that the agricultural commodities worth Rs.Two Crore Four Lakh had been siphoned away by its employees, who were entrusted with the safe custody of these goods and who were under a duty to protect the goods. Accordingly, the above stated offence was registered against the three employees of the company.

5] Now it is the contention of the petitioner that the investigation so far made is not satisfactory and the petitioner also suspects that not only the employees of Geo-Chem but also the Directors of this company may have been involved in commission of these offences, by forging a conspiracy with its employees. Therefore, almost about one and half years after having noticed the commission of these offences, the petitioner lodged a written complaint dated 13.04.2019 with Police Station, Sevagram. As no action was taken by Police Station, Sevagram, the petitioner has filed the present petition. The prayer made

in the petition is that Sevagram Police Station be directed to register offences against the persons named in the complaint and these offences could be those punishable under Sections 379, 406, 420, 465, 467, 468, 471, 447, 451 and 120(B) of the Indian Penal Code.

6] Learned counsel for the petitioner, however, submits that he would not press the prayer for the registration of the offences punishable under Sections 465, 467, 468, 471, 447, 451 there being not even an iota of circumstances indicating commission of these offences. He would, however, press his prayer for the remaining four offences punishable under Sections 379, 406, 420 and 120(B) of the Indian Penal Code.

7] We have gone through the complaint. We find that no specific facts and circumstances have been stated which would, *prima facie*, disclose commission of any particular offence by any of the Directors of Geo-Chem company. Only general allegations are made in this complaint without specifying the particular role played by the Directors of the company and therefore, we find that this complaint does not disclose commission of any cognizable offences insofar as the Directors of the company are concerned.

8] Besides, the offences punishable under Sections 379 and 420 of the Indian Penal Code require some specific allegations in the nature that there has been dishonest taking away of the property by somebody and making of false representations which are, to the knowledge of the accused, false coupled with inducement. These allegations are absent in the complaint dated 13.04.2019. As regards, the offence of criminal misappropriation, we find that on the basis of the complaint lodged by the company, offence of criminal breach of trust punishable under Section 409 of the Indian Penal Code, a higher form of the offence indicated by the one under Section 406 of the Indian Penal Code, is registered against the employees of the company. It is not the case of petitioner that the Directors themselves were physically having the custody over the goods and not through their agents. On the other hand, it is the case of the Directors of the company that though the goods were entrusted to the company, the goods were under physical custody of their agents appointed for the purpose and it were their agents, who had committed the offence of criminal breach of trust. In these circumstances, we do not think that this petition can be entertained in any manner.

9] In the result, the petition stands dismissed.

Rule is discharged.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)

Sarkate.