IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 CRIMINAL WRIT PETITION NO.142 OF 2022

BHAUSAHEB SABAJI NILE

VERSUS

THE SANGAMNER MERCHANTS CO-OP. BANK LTD. SANGAMNER THROUGH IT'S AUTHORIZED OFFICER VIJAY DAYAKISAN BAJAJ

...

Mr. A.R. Salve, Advocate for the petitioner

Mr. A.N. Sikchi, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st JULY, 2022

ORDER :

1 Heard learned Advocate Mr. A.R. Salve for the petitioner and learned Advocate Mr. A.N. Sikchi for the sole respondent.

2 By this petition the petitioner – original accused in Summary Criminal Case No.138/2016 pending before Judicial Magistrate First Class, Akole, Dist. Ahmednagar wants to invoke the constitutional powers of this Court under Article 227 of the Constitution of India for quashing those proceedings. The said case has been filed by the present respondent alleging

that the present petitioner has committed offence punishable under Section 138 of the Negotiable Instruments Act.

3 The facts giving rise to the present petition as stated in the petition are that the petitioner had obtained loan from respondent to the tune of Rs.14,00,000/-, however, he could not repay the same as per the Schedule due to his financial crisis. The Bank started recovery proceeding as well as criminal proceedings in default of the loan installments. Even the Collector, Dist. Ahmednagar issued notice under Section 13(2) of SARFEASI Act, 2002. The petitioner had approached twice before this Court seeking protection by assuring that he would repay the loan and prayed for some time for making necessary arrangements. In spite of granting certain time by this Court, he had not deposited the amount and the interim protection that was granted came to be vacated by this Court. Again the matter was before the Division Bench of this Court and this Court directed the petitioner to make payment of Rs.12,00,000/- with the Schedule stated therein. However, petitioner could manage to collect Rs.3,00,000/- and went to Bank for depositing it and also for extension of the time to deposit remaining amount of Rs.9,00,000/-, however, the respondent/Bank refused. This Court had then again granted one week time to the petitioner to make the payment of Rs.12,00,000/- but it was then conditional order and it was stipulated that in

case of failure on the part of the petitioner to deposit the said amount the respondent would be at liberty to proceed further with the proceedings. The petitioner further states that he had obtained loan of Rs.14,00,000/- and against which he had deposited amount of Rs.8,00,000/- and then again in pursuant to the order passed by this Court he deposited amount of Rs.12,00,000/-. Taking disadvantage of the fact that the respondent/Bank was holding cheque of the petitioner, the proceedings under Section 138 of the Negotiable Instrument Act were filed. In fact, the repayment Schedule for the petitioner was up to 2029. He has, on the contrary, settled the amount i.e. amount of Rs.20,00,000/- within 8 years i.e. till April, 2021. In spite of such benefit, the respondent was harping upon the petitioner to make payments and issued notice contending that the petitioner has committed offence under Section 138 of the Negotiable Instruments Act. In fact, the Bank could have gone for one time settlement scheme which was introduced by the Government. When such huge amount has been paid by the petitioner, asking him to face the said case before learned Judicial Magistrate First Class, Akole, would be abuse of process of law and, therefore, he has prayed for quashing of those proceedings.

4 The learned Advocate appearing for the petitioner has relied on the orders passed by the Division Bench of this Court in writ petitions filed by

the petitioner, his own communication with the respondent/Bank and the amount deposited by him. Further, he relied on the Government Resolution dated 06.06.2022 issued by the Government of Maharashtra making the scheme of one time settlement applicable to the Co-operative Banks also.

5 The learned Advocate for the respondent has relied on the affidavit-in-reply filed on behalf of the respondent/Bank and also the documents stating that the contentions in the petition are wrong. As per the loan account, amount of Rs.23,45,001.20 ps. is due with interest and hold amount. The summary criminal case which has been filed against the petitioner under Section 138 of the Negotiable Instruments Act pertains to cheque for Rs.6,00,000/- only and as on the date of the filing of the petition the total loan amount due from the petitioner is Rs.23,43,893/-. Therefore, when the disputed cheque was towards the repayment of the part payment of illegally enforceable debt or liability and it was the public money i.e. involved, this cannot be the case where the constitutional powers of the Court under Article 227 of the Constitution of India should be exercised.

6 At the outset, this Court wants to insist upon the fact that there is consensus or agreement between the parties about the initial amount of loan that was sanctioned to the petitioner. Thereafter the respondent is also

accepting that there are certain payments those were made by the petitioner in view of orders in the writ petition. However, as regards the amount which is due from the petitioner is concerned, it is a disputed fact. This Court in its writ jurisdiction cannot enter into the arena of disputed facts. Whether a Bank should offer one time settlement scheme to its loan account holders would be the prerogative of the concerned Bank and Courts cannot give any kind of directions in that respect. It appears that though this Court on several occasion had given an opportunity to the petitioner to make the payments; yet, the petitioner has not made those payments within stipulated time. Naturally the interest would go on running and it will not stop or it cannot be stopped, unless there is voluntary agreement between the parties.

7 Quashment of the proceedings can be directed in exceptional circumstances when it is pointed out that there is any legal flaw or wrong assumption of jurisdiction. Here, the entire petition does not make a statement that the disputed cheque was not issued by the petitioner, it was not issued on the account maintained by him with a Bank etc. If the disputed cheque is issued by the petitioner on his account maintained with a Bank and as per the complainant it was discharged towards part liability, came to be dishonoured and then inspite of receipt of statutory notice the petitioner failed to make payment of the amount under the cheque, then, prima facie

the case was made out to proceed against the petitioner under Section 138 of the Negotiable Instruments Act. Therefore, such proceedings cannot be quashed on the basis of some disputed facts which cannot be gone into by this Court. Writ petition stands rejected.

(Smt. Vibha Kankanwadi, J.)

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