**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.171 OF 2020

Pramodkumar S/o. Suresh Vishwakarma ...**PETITIONER**
Age-53 years, Occu-Service,
R/o. Highland Society, Thane (W)

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**

2. The Tahasildar,
Tahsil Office Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar

AND
CRIMINAL WRIT PETITION NO.172 OF 2020

Balwant Yeshwant Deshmukh ...**PETITIONER**
Age-58 years, Occu-Retired,
R/o. Plot No.72, Sarthak, Chhatrapati Nagar,
Beed By pass Road, Aurangabad

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**

2. The Tahasildar,
Tahsil Office Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar

Mr. R. K. Temkar, Advocate for the petitioners
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.
RESERVED ON : 23rd NOVEMBER, 2022
PRONOUNCED ON : 21st DECEMBER, 2022

JUDGMENT

1. Rule. Rule made returnable forthwith with the consent of the learned counsel for the parties.

2. Both these petitions are arising out of the common order passed by the learned Sessions Judge in Criminal Revision No. 45 of 2013 passed by the learned Additional Sessions Judge, Ahmednagar dismissing the revision application. Revision was preferred by the present petitioners dismissing their application seeking discharge in RTC No. 283/2011 on application below Exh.26. The petitioners had preferred the application seeking discharge from the case bearing RTC No.283/2011. The petitioner in Criminal Writ Petition No. 171/2020 at the relevant time was working as a Branch Manager in the State Bank of India, Branch Shevgaon. The Petitioner in Criminal Writ Petition

No.172/2020 at that relevant time was working as Branch Manager in the State Bank of India who is now retired from service.

3. The case is arising out of FIR lodged by one Nitin Madhukar Patil working as Tahasildar, Tq. Shevgaon, Dist. Ahmednagar. He lodged the information on 30-12-2009 that an account was opened with the State Bank of India Shevgaon specifically for the purpose of depositing the amount collected towards royalty from mines and minerals. Cheques received from various Government Departments towards royalty were deposited in the said account. The account bearing No. 11548827130 is a current account. Amount from this account thereafter is taken under the head No. 0853004101. One B. R. Pawar working as a Clerk in the Tahasil Office was looking after the account of mines and minerals. Record in respect of mines and minerals and the cheques were in possession with the said clerk.

4. While looking at the accounts for a period of month from April, 2009 to November, 2009 account was checked wherein it was found that some of the cheques issued by the Government Department are not deposited in the account of Tahasil Office, and instead amount is withdrawn in the name of some private persons. On further enquiry about account, it was found that total amount of Rs.63,11,600/- is withdrawn in the name of private person namely V. B. Kanade. In further enquiry, it is found that there is no any employee with such name in the office of Tahasil. In the FIR it is further alleged that bearer cheques were presented in the bank though it is expected that the cheques should be crossed cheque, those were not crossed. It is alleged that since the cheques were for higher amount, it was necessary for the bank officials to take proper care and precaution while giving withdrawals of the amount. It is alleged that signatures and stamps on the cheques differ from the originals. It was, thus, found that bank employees are also responsible. Specific cheque numbers are mentioned in the FIR and it is reported that signature and seal of the Tahasil office

appears to be fabricated. It was further stated that cheques were not deposited as per their serial number. No entries of some of the cheques are taken in the record slip. B. R. Pawar could not give any explanation as to why those cheques were given to V. B. Kanade. A request was made to the bank officials to provide CCTV footage. From the CCTV footage it was found that one person is frequently seen. On looking at him cashier informed that it is the same person who comes for withdrawal of the amount by presenting cheques from Tahasil office. After looking carefully it was found that said person is one Mahesh Mohansing Shribas who was working in the office of Tahasil. On 30-12-2009 Mahesh Shribas had been to the office with a letter of resignation and thereafter he was not working with the office since April 2009. It is alleged that the amount is withdrawn from the month of May, 2009 till November, 2009. Allegations made against this Mahesh Shribas and B. R. Pawar working in the Tahasil Office. These petitioners are not named, however, only reference is made that said fraud is committed with collusion with the concerned bank officials and employees. On the basis of this FIR offence came to be registered.

5. Investigation started. During the investigation the names of these petitioners were allegedly revealed since for some period they were working as a Branch Manager in the bank.

6. After filing of the charge-sheet, these petitioners filed an application below Exh.26 seeking discharge. The petitioners had initially approached this court by filing the writ petition No.436/2011 seeking quashment of the complaint to their extent. However, said was withdrawn on 19-10-2011 with leave to file appropriate proceeding. It is thus, discharge application came to be filed. Main ground of petitioners in the discharge application is that they are not responsible and they are shown as an accused only on suspicion. Accused Nos.1 and 2 have committed this fraud as they are only the persons authorized by the Tahasil Office. Report of SDO shows that it is duty of the Tahasildar to tally balance sheet everyday. It was necessary to

obtain hand writing expert's report before lodging the complaint. There is no incriminating material against the petitioners in the charge-sheet. The complaint was lodged on 30-12-2009 whereas the names of these petitioners are added in October, 2010. Thus, there is delay of 10 months. Since there is no evidence the petitioners prayed for discharge.

7. Learned trial court rejected the application mainly on the ground that these accused persons were bank officials and thus they were expected to verify the specimen signatures with the signatures on the cheques presented by accused Nos.1 and 2. It is observed that both these petitioners therefore failed to discharge their duties with proper care and therefore, they are responsible for the offence. The petitioners filed criminal revision application and challenged the order dated 22-02-2013 passed by the learned Chief Judicial Magistrate Ahmednagar. The learned Sessions Judge also dismissed the revision on 07-11-2019. The learned Sessions Judge considered the statements of some of the witnesses which reveal that there is incriminating

evidence against the petitioners which, in the opinion of the learned Sessions Judge, are sufficient to show the involvement of these petitioners in the offence. In the supplementary statement of bank employees Chetan Shankar and Namdeo Sabale it has been brought on record that these petitioners are responsible to pass and to deliver the amount of disputed cheques. It is observed that helping to commit a forgery or to commit cheating is not a part of the official duty of a public servant and dismissed the revision vide judgment and order dated 07-11-2019.

8. Learned advocate for the petitioners submits that the present accused persons were working in the bank and only for that reason they have been falsely implicated in the offence. There is no material on record to show that these petitioners have taken any active part in commission of alleged fraud. It is in fact for the Tahasil Office to tally the account everyday which is not done by the that Office and therefore culprits could get an opportunity to commit a fraud and the same is not exposed

earlier. The account stands in the name of Tahasildar. All the documents related to the account are with the employee of the Tahasil Office. There is no allegation that the alleged forged signatures are made by these petitioners. In the complaint, it is specifically stated that it is one B. R. Pawar and Mahesh Shribas who have committed fraud. He submitted that the FIR was lodged on 30-12-2009. The investigation was carried till then the names of these petitioners did not transpire in the statement of any of the witnesses. It is for the first time the names of these petitioners appeared in the supplementary statement of Tahasildar on 06-10-2010 i.e. after 10 months of lodging of the FIR in which for the first time the Tahasildar has stated that the signatures on the photocopy of the cheques appears to be forged and also signatures on the cheques as well on the authority letter does not appear to be his signature and those are forged. It is further stated in the statement that a specimen signatures are given while opening the account. Concerned bank officials has not verified the signatures on the cheques while passing and mentioned the names of these petitioners. Even thereafter, there is no material found except the statement. The cheques were cleared for six months and still the fraud was not noticed. Thus, it is the fault of the Tahasil office. Bank sent the details of the transactions every month to Tahasil Office. The Tahasil Office could have tallied the entries immediately. Thus, this in fact in-action on the part of the Tahasil Office that the fraud continued for such a long period.

9. From the charge-sheet it is seen that SDO office has issued report dated 06-01-2010 to the Collector Office giving all the details about withdrawal from the accounts in the bank in which in issue No.7 it is stated that it was negligence on the part of the employees of the Tahasil Office and certain irregularities were noticed as i] not maintaining cashbook, ii] not updating the bank passbook from time to time, iii] amounts were deposited in the government treasury with delay, iv] details of cheques issued by bank were not maintained, v] no accounts were tallied in timely manner, vi] counter foils of the cheques were not preserved, vii] cheques were not given for encashment

serially. Thus, it is clear that it is the lapse on the part of the employees of the Tahasil Office due to which the fraud is committed. Thus, this is a lak of supervision by the Tahasildar. Further in the report it is mentioned that by mentioning the numbers of certain cheques that office copies of the letters of the authority issued by Tahasildar are not found in the office. It is further noticed from the photocopy of the letters of the authority that there are signatures of the Tahasildar and it was required to be verified as to whether those are the signatures made by the Tahasildar. At last it is mentioned in the said photocopy of cheques No.280346 dated 28-10-2009 for an amount of Rs.2,50,000/- bears the signatures of the present Tahasildar. However the Tahasildar Nitin Patil stated that it is not his signature and it is forged and it is seen that signatures on remaining 19 cheques and 7 authority letters are of the Tahasildar Kapadne and for that it was necessary to call for explanation from Kapadne Tahasildar.

10. Thus, it is submitted that even as per the report of

the SDO it is clear that lapses are on the part of the office of the Tahasildar. From the statement of Tahasildar has stated that it is the responsibility of the Tahasil Office to keep the proper account. In the statement he has further stated that signatures on the letters of authority and the cheques appeared to be similar to his signatures but are not his signatures. The cheque book was in custody of one B. R. Pawar and he has made forged signatures of the Tahasildar. He clearly accepted that because of work pressure of the Loksabha election he could not minutely inspect the accounts and also for the reason that there was a separate clerk looking after the account. Thus, it is submitted that even the Tahasildar whose signatures were forged also expressed that the signatures were similar to his signatures and he also alleged that the fraud is committed by the employees of his office.

11. From the Statement dated 02-01-2010 of Vishram Kasle working as a Branch Manager in the bank at the relevant time also stated the specimen signature of the account holders

are with the bank. Said has tallied by all the officers who passed the cheques. He also submitted that specimen signature tallied with the signature of the cheques. He has also further stated that in the first week of every month bank statement is given to the account holder. In this case also the detail account statements were given to the Tahasildar and since there was no complaint there is no question raising any doubt. It is not possible to verify each and every signature since there is always rush in the bank. Thus, it is submitted that after all there is no allegations that these petitioners have misappropriated any account. It is submitted that there is no sufficient material on record to proceed against these petitioners. From the chart it is seen that accused No.4 i.e. petitioner in petition No. 172/2020 has passed 15 cheques whereas two cheques were passed by accused No.3 i.e. petitioner in petition No. 171/2020. Even suspicion is not expressed against these petitioners and he prays for discharge.

12. At last it is submitted that at the most the material shows that these petitioners have passed the cheques however,

that by itself will not be sufficient even to raise suspicion against the petitioners, he states that the learned Sessions Judge has failed to appreciate this aspect and submitted that the petitions deserve to be allowed. He submitted that thus, trial court as well as revisional court have committed grave mistake in not allowing the prayer of discharge and prays that the impugned order deserves to be quashed and set aside by discharging the petitioners. In support of his submission the learned advocate for the petitioners relied upon the judgment reported in *(1993) 2 SCC 97 in the case of Bank of Maharashtra Vs M/s. Automotive Engineering Company*. In paragraph No. 11 it is held as under:-

> *11. ***** There is nothing on record from which it can be held that the payment of the said cheque has not been made in good faith. Although no strait-jacket formula can be laid down to cover each case of negligence of a banker and the question of negligence requires to be decided in the facts and circumstances, in each case, it does not appear to us that the appellant-bank can be held to be guilty of negligence simply because an ultraviolet ray lamp was not kept in the branch and the cheque in question was not subjected under the ultraviolet ray lamp. It has not been*

established in evidence that invariably the other branches of the appellant-bank or the other commercial banks had been following a practice of scrutinizing each and every cheque under the ultraviolet ray lamp or there was any prevalent practice to scrutinize cheques involving a particular amount under such lamp by way of extra precaution. In such circumstances, it cannot be contended as a correct legal proposition that the bank in order to get absolved from the liability of negligence, was under an obligation to verify the cheque for further scrutiny under advanced technology or for that matter under ultraviolet ray lamp apart from visual scrutiny. The cost of the ultraviolet ray lamp was only nominal and it might have been desirable to keep such lamp in the branch in question to take aid in appropriate case. But, even then it cannot be contended that although no forgery could be detected on visual scrutiny on the apparent tenor of the cheque in question and the reasonable care by way of scrutiny of the cheque with reference to its serial number, verification of the specimen signature of the signatory of the cheque had been made, the bank officials should have resorted to scrutiny of the cheque under ultraviolet ray lamp by way of additional precaution and by not taking such extra precaution the bank may be held guilty of negligence. We do not think that there was any justification for the courts below to proceed on the footing that the bank had failed to take reasonable care in passing the cheque for payment without subjecting it for further scrutiny under ultraviolet *ray lamp because of the branch was on the outskirts of the metropolitan city of Bombay and in an industrial area where such forgery was rampant, particularly when other branches of the appellant-bank were provided with such lamp. We, therefore, allow this appeal, set aside the judgment and decree passed in the suit since affirmed by the court of appeal below and also by the High court.*****

13. Learned advocate for the petitioners has also relied upon the judgment delivered by the Hon'ble Apex Court in *Criminal Appeal No. 472/2021 in the case of Sanjay Kumar Rai Vs State of Uttar Pradesh and another*. By considering various case laws and also the judgments in the case of *Madhu Limaye Vs State of Maharashtra reported in (1977) 4 SCC 551* has observed that it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspects. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. (Union of India V. Prafulla

Kumar Samal). Likewise, the court has sufficient discretion to order further investigation in appropriate cases, if need be.

14. Learned APP supports the order passed by the learned Sessions Judge. He submits that it is a primary duty of bank officers to work with care and caution. In this case a negligence is clearly seen on the part of the employees. These two accused have cleared cheques on which the signatures were forged. Prima facie case is, clearly made out. He invited attention to the dates and amounts of 19 cheques. He submitted that the cheques are presented with short gaps. These persons have supported main accused persons. The accused have sufficient experience of handling the accounts. About the role of the petitioner in petition No. 172/2020, he submitted that he was working as Branch Manager and thus, there is sufficient material on record to proceed against the accused persons. He further submitted that the amount of Rs. 66,11,00 lakhs is involved and he prays that the petitions be dismissed.

15. Thus, at this stage the court has to see the material and evidence produced on record by the prosecution and to find out whether sufficient material is available to proceed to frame charge? In this view the documents are required to be seen in this case. As appearing from the record it is clearly seen that in the FIR no names of petitioners are appearing. The FIR is recorded on 30-12-2009. For the first time a supplementary statement of the Tahasildar is recorded on 06-10-2010 in which he has stated that the officers while clearing the cheques have not taken sufficient care and therefore, the bank officers are responsible foir the fraud. It is for the reference to the names of the present petitioners is made. From looking at the sanction order issued by the Collector, Ahmednagar it is also seen that though it is only in respect of sanction of the employees from Tahasil Office still it can be seen that there is also no reference of the names of the petitioners.

16. It is seen that there is also a report made by SDO to the Collector dated 06-01-2010 this report also shows that there

is negligence on the part of the employees of the Tahasil Office as they have not taken care to maintain the cash book etc as referred to in the forgoing paragraph. From the record further it is seen that there is lack of supervision by the Tahasildar and employees and their office as is clear from the statement of Tahasildar who has accepted that since he was busy in the election duty and since a separate clerk was employed to look after the accounts of mines and minerals. Thus, looking at the record it is clear that event the Government authorities are also of the opinion that it is the employees from the Tahasil Office who are responsible for fraud and it is because of negligence on the part of Tahasildar fraud is committed. The prosecution does not possess any positive evidence to show even prima facie, involvement of these petitioners. It is only suspicion that too which appear for the first time in the statement dated 06-10-2010 that the bank officers also must have been involved in the offence.

17. Considering the facts and considering the material

available on record this court finds that the trial court has committed mistake by rejecting the application preferred by the petitioners under Section 239. The learned Sessions Judge also failed to exercise the jurisdiction properly and has failed to consider that there is no sufficient material on record to proceed against the petitioners. The present criminal petitions, therefore deserve to be allowed.

18. Rule made absolute in above terms.

[KISHORE C. SANT, J.]

VishalK/criwp171.20