

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

CRIMINAL WRIT PETITION NO.459 OF 2020

Ravi Bhagwanrao Bhosale
Age 39 years, Occu. Agri.,
R/o Chakur, Tq. Chakur,
District Latur

... PETITIONER

VERSUS

The State of Maharashtra
Police Station Officer,
Murud Police Station
Tq. and Dist. Latur.

... RESPONDENT

.....
Mr. P.P. More, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 28th April, 2022

Date of pronouncing judgment : 23rd November, 2022

J U D G M E N T :

The challenge in this Criminal Writ Petition under Article 227 of the Constitution of India is to an order dated 10/2/2020, passed by Additional Sessions Judge, Latur, rejecting petitioner's application (Exh.34) for discharge from Special Case No.1/2017.

2. Heard. The First Information Report (F.I.R.) was lodged by one Amar Pundlikrao Nade on 6/2/2016. It is his case that, he was resident of village Murud, Taluka, District Latur. He runs a cycle shop. A branch of Aditya Multi-State Co-operative Credit Society was functioning at Murud. Accused Rajendra Nivrutti Dhaktode was Director-cum-Extension Officer while accused Manoj Kawade was Regional Officer. Kishor Bhosale was Promoter-cum-Executive Director. The informant along with his friend Rajendra Shitole was present at his shop. It was March 2014. Nivrutti Dhaktode, Kishor Bhosale, Rajendra Dhaktode and Manoj Kawade (co-accused) came to him. They requested the informant to invest amount in Aditya Multi-State Co-operative Credit Society. They promised him to pay high rate of interest on the amount to be deposited. The informant, therefore, deposited a sum of Rs.7,65,000/- in a fixed deposit scheme of a period of 13 months. On the period of maturity, the informant went to the accused persons and asked for return of the amount. All of them avoided to pay back the amount on one or the other pretext.

3. Based on the said F.I.R., crime vide C.R. No.26/2016 came to be registered for offences punishable under Sections 420, 418, 406, 468 read with Section 34 of

the Indian Penal Code and Maharashtra Protection of Interest of Depositors Act (M.P.I.D. Act). During investigation, very many depositors came forward. They gave their statements, informing the investigating officer to have deposited various sums. It was their case that, the aforesaid four persons had lured them to deposit amount with the Aditya Multi-State Co-operative Credit Society. On maturity, when they visited the branch, it was found to have been closed. Their requests for repayment of the amount/s were turned down by the aforesaid persons.

On investigation of the crime, charge sheet came to be filed against the petitioner and others.

4. The petitioner moved an application for discharge. It is his case that, he tendered resignation of his post as a Director of the Co-operative Credit Society way back on 12/6/2012. Although his resignation was accepted in 2014, he had never participated in the day-to-day affairs of the Aditya Multi-State Co-operative Credit Society.

5. On hearing learned counsel for the present petitioner and the learned A.P.P., the trial Court rejected the application mainly on the ground that witness Prashant Mahanavar had deposited a sum of Rs.1,00,000/- for the

period June 2011 to June 2012 while witness Subhash Surana deposited his amount in the year 2011. both these deposits were during the period the petitioner was Director of the Credit Society. The trial Court relied on Section 3 of the Maharashtra Protection of Interest of Depositors Act (M.P.I.D. Act) and observed that the said provision provides that, any financial establishment which fraudulently defaults repayment of deposits on maturity along with benefit like interest, bonus or fraudulently fails to render assured service while taking investment, then every person i.e. promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting business of said financial establishment is liable to be convicted.

6. Learned counsel for the petitioner would submit that, after going through each and every paper of the charge sheet, there is nothing to suggest the petitioner to have ever been in the management of the financial affairs of the Credit Society. The petitioner tendered resignation of his post way back in June 2012. Almost all the statements of the investors point out accusing finger towards Rajendra Dhaktode, Manoj Kawade and others. A general allegation has been made against the petitioner. He would further submit that, based on factum of resignation tendered by the petitioner, the

prosecution agency has filed reports under Section 169 of the Code of Criminal Procedure in other similar crimes. He, therefore, urged for allowing the writ petition.

7. Learned A.P.P. would, on the other hand, submit that, although the petitioner had tendered resignation of his post, there are statements indicating some of the depositors to have deposited their money during the tenure of the petitioner. The learned A.P.P. reiterated the reasons given by the trial Court for rejection of the application.

8. Considered the submissions advanced. Perused the police papers. The F.I.R. has been lodged by one of the depositors. The magnitude of the offence is stated to be Rs.1,04,78,765/-.

9. Chapter XIX of the Code of Criminal Procedure speaks of warrant cases by Magistrate. Section 239 thereof reads thus :

"239. When accused shall be discharged :- If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

This provision is referred to since procedure prescribed for trial offences under M.P.I.D. Act, is that of trial of warrant cases by Magistrate.

10. In (2008) 10 SCC 394 [Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra], the Hon'ble Supreme Court held :-

"It is trite that the words "not sufficient ground for proceeding against the accused" appearing in Section 227 Cr.P.C. postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible."

Although the aforesaid citation pertains to Section 227 of the Code of Criminal Procedure, the basic requirement

for framing of charge in case of trial of warrant cases by Magistrate is same or similar to that of requirement under Section Section 227/228 of the Code of Criminal Procedure.

11. The prosecution does not dispute the petitioner to have had tendered resignation of his post of Director of the Credit Co-operative Society way back in June 2012. This Court does not come across of any papers of investigation indicating the petitioner to have ever been in the management of the financial affairs of the Credit Society. After going through the statements of the witnesses, this Court finds that, except two persons, others have invested money post the petitioner tendered resignation of the post of Directorship. So far as regards statement of Subhash Surana, referred in impugned order is concerned, it is evident therefrom that, he had a Pigmy Account with Murud Branch of Aditya Multi-State Co-operative Credit Society. He would deposit Rs.500/- every day. The said Account was opened in 2011. When his Pigmy Account was matured, he deposited the entire amount thereof in a fixed deposit. The said deposit was made on 12/3/2013, necessarily after the petitioner tendered resignation of his post. Although there is one witness claiming to have deposited a sum of Rs.1,00,000/- in 2011, from the papers of investigation, it should have been

prima facie made out that the petitioner was in the day-to-day management of the affairs of Aditya Multi-State Co-operative Credit Society, Murud Branch. It should also be shown that the amount deposited with the said Credit Society reached the petitioner's hands and he himself misappropriated the same. On close scrutiny of the police papers, there is prima facie nothing to suggest the petitioner to have misappropriated the funds/ amount of depositors.

12. In view of this Court, there is no incriminating material for framing of a charge against the petitioner. His liability is sought to be made out on the ground of he being a Director of the Credit Society at the relevant time. It is reiterated that, the petitioner tendered resignation of his post in June 2012. There is nothing to suggest him to have been in the management of the financial affairs of the Credit Society and he has misappropriated the Society's funds. It is, however, made clear that, order discharging the petitioner herein would in no way absolve him of his civil liability, if any.

13. In the result, the petition succeeds. The Criminal Writ Petition is allowed. The impugned order dated 10/2/2020, passed by Additional Sessions Judge, Latur, below application (Exh.34) in Special Case No.1/2017 is hereby set

aside. The application (Exh.34) filed by the petitioner for discharge is allowed. The petitioner stands discharged from Special Case No.1/2017

(R. G. AVACHAT, J.)

fmp/-