Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2068 of 2022
WITH
CRIMINAL WRIT PETITION NO.2076 OF 2022

Dadarao Abarao Raut & Ors. … Petitioners

V/s.

Mumbai District Central Co-operative Bank Ltd. & Anr. … Respondents

Mr. Ajit D. Hon for the Petitioner.

Ms. G.P. Mulekar, APP for the State.

Mr. Omar K. Shaikh i/b Vikas Salvi and Associate for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2022

P.C.:

1. Since the facts involved and the question is common, both the writ petitions are being disposed of by this common judgment.

2. The petitioners are Managing Committee Members of the Co-operative Societies registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. The complainant is a federal society, of which the petitioners-societies are members. On 6th February, 2018 the complainant sanctioned a loan of Rs.30,000,0000/-(Rs. Thirty Crore Only) at the rate of 10% per annum for a period of twelve (12) months to the society of which the petitioners are Managing Committee Members. Towards repayment of the loan amount, a cheque signed by accused Nos. 1

and 2 in the sum of Rs.32,19,27,267/-(Thirty Two Crore Nineteen Lac Twenty Seven Thousand Two Hundred and Sixty Seven only) dated 10th December, 2019 was issued. The said cheque was dishonored with remark “Funds Insufficient”. The complainant in support of the complaint filed an affidavit dated 21st January, 2020. Apart from the averments in the complaint, the affidavit states that the accused persons are jointly and severally liable for doing and day-to-day affairs of the Society and in-charge and control of management and activities of the accused No.1-society. It is also stated that since they are not residing within the local jurisdiction of the learned Magistrate, considering the said affidavits and other materials, passed an order of issuance of process. The petitioner has challenged the order of issuance of process before the learned Sessions Judge by way of revision. The said revision has been dismissed by the impugned Judgment and Order.

3. The Advocate for the petitioner submitted that there is complete non application of mind while passing the order of issuance of process. No inquiry under Section 202 of Code of Criminal Procedure, 1973 has been conducted.

4. On perusal of the order of issuance of process, it appears that the learned Magistrate has taken into consideration the averments in the complaint apart from the affidavit filed by the complainant. The order of issuance of process also discloses that the learned Magistrate has gone into the Judgment in the Case of **Standard Chartered Bank Vs. State of Maharashtra** CDJ 2016 SC 305. The roznama annexed along with this petition at Exh.C discloses that the affidavit under Section 202 of Cr.P.C had been filed by the complainant. On perusal of the roznama along with the order of issuance of process demonstrates that the inquiry under Section 202 had in fact been conducted by the learned Magistrate and, therefore, the submissions on behalf of the petitioner in this regard cannot be accepted.

5. The learned advocate for the petitioners next submitted that the petitioners are not responsible for conducting day-to-day affairs of the society. The learned advocate for the complainant invited my attention to the Exhibit-B to the complaint wherein the petitioners had themselves stated in the application for grant of loan that they were involved in the day-to-day management of the society. Apart from alleging absence of necessary averments in the complaints and affidavit that the petitioners are responsible for day-to-day affairs of the society, no material has been placed on record that the petitioners are not responsible for day-to-day affairs of the society. The Apex Court in the judgment of **S.C. Mani and Mohan Dairy V. Dr. Snehalatha Elangovan** reported in 2022 SCC Online SC 1238 has held in paragraph 47 as under :

> 47.......
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> “a.) The primary responsibility of the complainant is to make a specific averments in the complaint so as to make the accused vicarious liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent

the commission of such offence, he/she will not be liable to punishment.”

“b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstance, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the Company of the partners of the firm, as the case may, who have th special knowledge about the role they had played in the company or the partners in a firm to show before the court they had played tin the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Section 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138/ being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.”

“c.) Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners ‘qua, the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal".

"d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/She must make out a case that making him/her stand the trial would be an abuse of process of Court."

6. In view of the authoritative pronouncement of the Apex Court holding that it is for the persons who are alleging themselves to be independent directors of the company to place on record necessary material to show that they are not involved in the day-to-day affairs. In my opinion, the averments in the complaint along with the affidavit filed in support of the complaint is sufficient to hold that the petitioners are responsible for the day-to-day affairs of the company. In the facts of the present case, apart from the statements in Exhibit D and the averments in the complaint, the petitioners have signed the loan document portraying themselves to be persons responsible for day-to-day affairs of the society, therefore, in my opinion, the order of issuance of process issued against the petitioners cannot be faulted. The order impugned does not suffer from any perversity and does not result into miscarriage of justice. No interference is, therefore, called for under extraordinary supervisory jurisdiction of this Court.

7. Both the petitions are, accordingly, disposed of. No costs.

(AMIT BORKAR, J.)