

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1317 OF 2021

Shriram Sakharam Kandekar ...Applicant
Versus
Bhila Ahire, Recovery Officer And Ors. ...Respondents

....

Mr. Sudip Mallick a/w Mr. Harshad Palwe, Advocate for the Applicant.
Mr. Arfan Sait, APP for the Respondent - State.

CORAM : PRAKASH D. NAIK, J.
DATE : 23rd SEPTEMBER, 2022.

P.C.

1. The applicant is aggrieved by Order dated 29th October, 2018 passed by learned J.M.F.C., Malegaon in C.C. No.2395 of 2004 below Exhibit-174 and Order dated 11th October, 2019 passed by the learned Additional Sessions Judge, Malegaon in Criminal Revision Application No.1 of 2019.

2. The applicant is the original complainant in Summary Criminal Case No.2395 of 2004. The complaint was filed on 3rd September, 2004 for offence under Sections 447, 341, 427, 143, 506 and 34 of Indian Penal Code (for short 'IPC'). The complaint was filed against several persons. It was alleged that the complainant is carrying on business at Gala No.4-A in Shivneri Complex at Malegaon, Dist. Nashik relating to sale and repairs of electronic goods. The Malegaon Merchant Co-operative Bank, Malegaon is a co-operative society registered under the Malegaon Co-operative Societies Act. It

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is conducting banking business. Accused No.2 is the General Manager of the said society. The members of society has appointed Board of Directors for carrying out day to day business of the society. Accused No.3 is the Chairman of the said society. Accused No.1 is the recovery officer. Accused Nos.4 to 9 were the employees of Malegaon Merchant Co-operative Bank Ltd. The complainant borrowed the loan of Rs.3,50,000/- from the aforesaid bank on 31st July, 2000. He had provided the property at Gut No.51/1 situated at withing the jurisdiction of Chaukatpade Grampanchayat at Malegaon as security for the loan. The complainant has been paying the installments of loan obtained by him to the bank. The certificate under Section 101 of Maharashtra Co-operatives Act has been obtained by the bank from the Sub-registrar of Co-operative Societies against the complainant. The employees/officers, recovery officers visit the shop of complainant for recovery of installments and collected the same from him. The complainant was threatened that the shop would be sealed and the accused had obtained the amount from hi. The complainant had never evaded or ignored the payment of installments of loan. The details of payment made by him is not provided to him. On 5th March, 2004 without giving any prior notice to the complainant, the recovery squad of the bank had visited the shop of complainant. He was not present at the shop. Sharad

Tulshiram Patil was present at the shop. He was informed about action is initiated for non-payment of loan amount. The aforesaid person entered into the shop and caused damage to the articles in the shop. They sealed the shop premises and took possession of the shop. The accused Nos.1 and 4 to 9 had participated in crime. The bank did not take any action. The complainant demanded the possession of the premises. He made complaint to the Police. The accused justified their action by sending reply to the notice issued by the complainant. On 25th May, 2004 notice was issued to the complainant intimating that, the goods lying in the shop would be sold. The complainant objected for the same. The complainant was called by accused No.3 in the office of bank vide letter dated 4th June, 2004. The employees and the Directors were present at the office of bank. The complainant was told to repay the loan amount. He was threatened. He was informed that, the entire property would be attached. The accused Nos. 1 and 4 to 9 formed unlawfully assembly and caused damage to the shop of the complainant.

3. The learned 2nd Joint J.M.F.C., Malegaon vide Order dated 31st January, 2005 issued process against accused Nos. 4 to 9 under Sections 447, 143 r/w 34 of IPC.

4. Vide Order dated 25th September, 2006 charge was framed under Section 143 r/w 149 of IPC and 447 r/w 149 of IPC.

5. The Examination Chief of the complainant/applicant was recorded. He was cross-examined of the said witnesses were also recorded. The complainant also examined PW-2 Prakash Kaurani. He was cross-examined. Thereafter, evidence of PW-3 Sharad Patil and PW-4 Sambhaji Nikam was recorded. Evidence of PW-5 Bajirao Shinde was recorded on 18th June, 2012, and evidence of PW-6 Devidas Bagade was recorded on 9th October, 2017. He was cross-examined on 11th December, 2017. Evidence of PW-7 Nitin Joshi was recorded on 1st October, 2014.

6. The applicant preferred an application under Section 319 of Cr.P.C. It was contended that, the accused in the case are employees of Malegaon Merchant Co-operative Bank. As per the evidence adduced before the Court, Directors of the Bank has passed several resolutions. On perusal of the resolutions it can be seen that, the Directors of the Bank has supported the accused and justified their acts. Directors are connected with the crime. The applicant had named several persons in the said applications and prayed that all of them are necessary to be impleaded as accused and punishable for the offences. When the complainant had filed complaint, he was not aware about their involvement. The police had neglected while conducting inquiry under Section 202 of Cr.P.C. Hence, the involvement of the said persons was not revealed. There is *prima*

facie evidence against them and they are required to be impleaded as accused in accordance with Section 319 of Cr.P.C. The application was opposed by accused by filing reply. Learned Magistrate vide Order dated 29th October, 2018 rejected the said application.

7. The applicant had challenged the said Order of rejection of application under Section 319 of Cr.P.C. by preferring Criminal Revision Application No.01 of 2019 before the Court of Sessions at Malegaon. Learned Sessions Judge vide Order dated 11th October, 2019 rejected the said application.

8. Learned Advocate for the applicant submitted that there was sufficient evidence before the Court to impleaded the additional accused in accordance with Section 319 of Cr.P.C. The additional accused had acted in connivance with the accused who are prosecuted in the said proceedings. This fact came to light from the evidence of witnesses examined by the applicant/complainant. Both the Courts have failed to take into consideration the scope of Section 319 of Cr.P.C. The Courts below were influenced by the fact that there was delay in trial while rejecting the application under Section 319 of Cr.P.C. The complainant has been following the case since last several years. The respondents and the accused sought to be added vide Section 319 of Cr.P.C had acted in connivance with each other and they have aided and abetted each other in commission of crime.

9. The complaint was filed by the applicant on 3rd September, 2004. Verification statement of complainant was recorded. Report under Section 202 of Cr.P.C. was called vide order dated 3rd September, 2004 and it was received on 4th November, 2004. In the report it was mentioned that the dispute is of civil nature. The learned Magistrate by order dated 31st January, 2005 issued process against the accused Nos. 4 to 9 under Sections 447, 143 r/w 34 of IPC. Charge was recorded by order dated 21st September, 2006 under Section 143 r/w 149 of IPC and Section 447 r/w 149 of IPC. The complainant examined witnesses. The application under Section 319 of Cr.P.C. was filed before the trial Court on 1st October, 2018. The application was opposed by the accused by filing reply dated 15th October, 2018. The trial Court vide its order dated 29th October, 2018 rejected the said application. The learned Magistrate considered the scope of Section 319 of Cr.P.C. The Court also considered the decision of the Hon'ble Apex Court in the case of *Hardeep Singh V/s. State of Punjab (2014) 3, SCC 92*. It was observed that, the complainant has already included the Chairman, Special Recovery Officer and General Manager of the bank in the complaint. Process was issued against Accused Nos. 4 to 9 and the complaint was dismissed against accused Nos.1 to 3. The dismissal of complainant against accused Nos. 1 to 3 attained finality. There is

nothing on record to suggest that the complainant had challenged the said order. The application was filed after examining seven witnesses and adducing documentary evidence on record. From evidence on record it can be seen that the accused have acted against the complainant on loan amount which is due towards the bank. This fact was within the knowledge of complainant while filing complaint. On perusal of complaint it can be seen that the complainant has admitted taking loan from the bank. It is also admitted that accused were recovering the loan amount from the complainant. It is admitted that that Co-operative Society or a bank always acts in accordance with resolution passed by the Board of Directors. The resolution on record filed by the complainant shows that the bank had authorized recovery loan from complainant. There is nothing in the resolution to indicate that the Board of Directors had instigated accused to commit any offence. There is nothing on record to suggest that Board of Directors had any role to play in the commission of offences. The degree of satisfaction as contemplated by the Hon'ble Apex Court in Hardeep Singh's case is not fulfilled by the complainant. The complaint was filed on 3rd September, 2004. The application was filed on 1st October, 2018. There is delay in filing application. Considering the ratio laid down by the Hon'ble Apex Court in Hardeep Singh's Case, complainant has failed to fulfill

the requirement under Section 319 of Cr.P.C. against proposed accused.

10. Learned Sessions Judge vide its order dated 11th October, 2019 confirmed the order passed by trial Court. It was observed that the trial Court has discussed all the relevant facts of the case. There is no specific role attributed to the proposed accused by the complainant in his application. The complainant had knowledge that he is filing complaint against Malegaon Merchant's Co-operative Bank and its employees. In the complaint it is mentioned that to run the business of bank there is a body of Directors. Thus, he has knowledge that the business of bank is governed by the body of Directors. He did not implead them as accused while filing complaint. He filed complaint against Chairman and General Manager of the bank. The application is malicious. It is filed with intention to prolong the case. After 14 years of lodging the complaint, the application under Section 319 of Cr.P.C. was filed. The process was issued under Section 447, 143 r/w 34 of IPC. The application was barred by under Section 468 of Cr.P.C.

11. There is no reason to interfere the impugned orders. There was no evidence to invoke Section 319 of Cr.P.C. The Courts below has assigned cogent reasons for rejecting the application preferred by the applicant. Section 319 of Cr.P.C. suggested that during the trial it

has to appear from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused who are tried. The discretion must be tried judicially. The Court below has rightly observed that the application under Section 319 of Cr.P.C. is malicious. There is no reason to interfere in the impugned orders passed by the Court of learned Magistrate and the Sessions Court. There was no evidence to exercise powers under Section 319 of Cr.P.C. The application is devoid of merits.

12. Hence, I pass the following order.

ORDER

Criminal Application No.1317 of 2021 is rejected and disposed off accordingly.

[PRAKASH D. NAIK, J.]