

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 278 of 2020

Dileep Kumar Miglani S/o Lajpat Miglani,
Aged about 36 years,
Occu : Branch Manager, State Bank of India,
Ramdaspath Branch, Nagpur,
R/o Nagpur SBI 1633 [sbi.01633@sbi.co.in]

... **Petitioner**

... **Versus** ...

- (1) State of Maharashtra
Through P.S.O. Sitabuldi Police Station
District Nagpur.
- (2) Mrs. Madhuri W/o Ramesh Chimurkar,
Aged Major, Resident of 16/1,
Ward No. 33, Poddar Bagicha,
Shastri Chowk, Wardha,
Maharashtra-442001.
- (3) Mrs. Saroj W/o Subhash Dass,
Aged Major, resident of Plot No. 34,
Rameshwari Bus Stop, Near Fulmati
Mandir, Parvati Nagar,
Nagpur – 440027.
- (4) ~~Mr. Padmakar S/o Tejram Kukde,
Aged Major, Resident of Rakesh Society,
Near V. T. Convent, Sakat Nagari,
Plot No. 23, Beltarodi road, Nagpur
And also,
Plot No. 17, Bajrannagar, Gali No. 6,
Jadu Mahal Road, Manewada Road,
Nagpur.~~

Amended as per
the Court order
dt. 12/07/2021
i.e. deleted
Respondent 4

... **Respondents**

Ms. Mitisha Kotecha, Advocate h/f Mr. M. Anilkumar, Advocate for the
petitioner
Mr. S. S. Doifode, APP for respondent 1
Mr. S. S. Meshram, Advocate for respondents 2 and 3

**CORAM : ROHIT B. DEO AND
ANIL L. PANSARE JJ.**

DATED : 20-9-2022

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. With consent, the petition is finally heard.

2. The petitioner was working as Branch Manager/Chief Manager with State Bank of India, Ramdaspath Branch, Nagpur. One Mr. Tejram Ganpatrao Kukde, since deceased, had six different accounts with the State Bank of India, the details of which are thus :

Sr. No.	Account Number	Account type	Nominee	Balance
1.	11072644225	SB Pension	Mr. Padmakar Kukde	₹ 1,73,259/-
2.	31108871411	PPF A/C	Mr. Padmakar Kukde	₹ 12,12,268/-
3.	31536756343	FDR	Mr. Padmakar Kukde	₹ 7,93,258/-
4.	31525477759	FDR	Mr. Padmakar Kukde	₹ 3,09,729/-
5.	11072644214	SB	Mr. Padmakar Kukde	₹ 3,04,436/-
6.	38281477366	Sb Joint with Saroj Dass	Mr. Akash Dass	₹ 5,11,947/-
Total				Rs.33,04,897/-

3. Late Tejram Ganpatrao Kukde submitted nomination under Section 45ZA of the Banking Regulation Act, 1949 whereby he

nominated his son Padmakar Tejram Kukde as the nominee in five accounts, as is discernible from the details extracted supra.

4. It appears that Tejram Ganpatrao Kukde died on 28-7-2019 and the nominee Mr. Padmakar Kukde informed the bank of the death of the account holder and produced copy of the death certificate.

5. It further appears that acting on the basis of the nomination, various officers of the bank processed the claim for withdrawal of the amount lodged by the nominee and the process is supervised by the petitioner as the branch head.

6. It further appears that on the basis of the nomination, certain payments were released in favour of the nominee after obtaining indemnity bond.

7. It also appears that respondent 3 – complainant did object to releasing the amount in favour of the nominee. The petitioner, however, informed the complainant/objector that in view of the nomination, which is not in dispute, the bank would not be justified in not honouring the nomination and that the complainant should approach the appropriate court.

8. Be that as it may, the complainants preferred an application under Section 156(3) of the Code of Criminal Procedure, 1973 (Code) before the learned Magistrate seeking direction to investigate the alleged offence. The nominee, Mr. Padmakar Tejram Kukde and the applicant were impleaded as the proposed accused. The sum and substance of the allegations against the applicant is that misusing the office, fraudulent documents are prepared in connivance with the nominee and the money is paid to the nominee although there is a will executed by the deceased account holder.

9. The learned Magistrate directed the officer in-charge of Sitabuldi Police Station to investigate the offence and file report. Pursuant to said direction, the First Information Report for offences punishable under Sections 409, 420, 468 and 471 read with Section 34 of Indian Penal Code is registered.

10. We are satisfied that in so far as the applicant is concerned, the registration of crime is an abuse of the process of law. The nomination under Section 45ZA of the Banking Regulation Act is not in dispute. Perusal of the objection raised to the disbursement reveals that the submission of nomination is accepted. The objection letter itself refers to the withdrawal claim as “nomination claim”. The

objection is founded on the basis of alleged will executed by the deceased account holder in favour of the objector/s.

11. The law is well settled. The nomination serves a salutary purpose. The bank is within its right, and indeed is expected to, honour the nomination. While nomination does not necessarily mean that the nominee is exclusively entitled to the estate or money, the nominee then is considered to be the trustee qua the amount received from the bank on the basis of nomination and the nominee is duty bound to distribute the amount to the rightful owners.

12. We do not find any material or circumstance to suggest the involvement of the applicant in the alleged offence. We emphasize that till the nomination was honoured, the complainants did not come up with the case that the bank officers acted in connivance with the nominee and/or forged or fabricated any document. The objection was simple and based on alleged will. Obviously, all that the bank could do was to honour the nomination, leaving the parties to adjudicate their entitlement before the appropriate forum.

13. We have no hesitation in holding that it would be an abuse of the process of law if the applicant is compelled to face the agony and

trauma of investigation much less trial. The application is allowed in terms of prayer clauses (ii) and (iii) to the extent of the applicant.

14. Prayer clauses (ii) and (iii) read thus :

“(ii) Quash and set aside the order dated 27.2.2020 passed in Misc Criminal Application No. 298/2020 (Madhuri Chimurkar and one -Vs- Padmakar and one) pending before the Hon’ble Court of Judicial Magistrate First Class, Nagpur, Court No. 2, Nagpur (**Annexure XII**) and other material on record and dismiss the complaint.

(iii) Quash the F.I.R. No. 138/2020 dated 7.3.2020 for the offences under Section 409, 420, 468, 471 read with Section 34 of I.P.C. (**Annexure XII**) in the interest of justice.”

15. Rule is made absolute in the aforestated terms.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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