

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 460/2021

Sandip Dayaram Bunde...Versus...Buldana District Central Co-Op Bank Ltd

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M.Tirukh, Advocate for petitioner.
Mr. A.P.Wachasundar, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 01/02/2022

1] Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard Mr. Tirukh, learned counsel for the petitioner and Mr. Wachasundar, learned counsel for the respondent.

3] The contention raised is that the complaint under Section 138 of NI Act was filed by the Respondent Bank, through its Branch Manager on the basis of a resolution dated 17.5.2013, whereas by an order dated 18.9.2013, authorized officers were appointed in place of some of the Board of Directors under Section 77-A of the Maharashtra Co-operative Societies Act and therefore, without the

authorization in writing of the authorized officers so appointed, complaint was not maintainable and the issuance of the process by the learned Magistrate on 23.1.2018 to the petitioner, therefore, was objected to in revision. The learned revisional Court after an earlier round of litigation by the impugned order dated 13.1.2021 has dismissed the revision leading to the present petition.

4] Though the question of authorization of the Branch Manager to file the complaint under Section 138 of the N.I. Act on the basis of the resolution dated 17.5.2013 by the then Board of Directors is in question, it is, however, material to note that the entire Board of Directors comprises of 24 persons, out of which 22 persons had resigned, as a result of which by an order dated 18.9.2013 passed by the learned Joint Registrar, Co-operative Societies under Section 77-A of the MCS Act, the vacancies created due to the resignation were filled up by appointment of three authorized officers. It is thus apparent that, it is not the case that as if the management has been taken over by the authorized officers, rather on the contrary, these authorized officers were made part of the Board of Directors, along with the two directors, who continued to hold the office. Therefore, it is apparent that the management continued to remain the same, the only change being the appointment of the authorized officers in place of those directors who had

resigned. Therefore, the resolution dated 17.5.2013 on this ground did not lose its efficacy and continues to operate and hold the field, whereby the manager continued to be authorized to file the complaint on behalf of the bank. Even otherwise, the question of authorization is one which can also be corrected by way of post-facto ratification, which is permissible in law.

5] In so far as the contention that the cheque in question was a non CTS cheque and in view of the communication dated 18.3.2013 by the Reserve Bank of India was valid only for four months upto July 2013, clause (c) of the communication dated 18.3.2013 itself indicates that the same was subject to review in June 2013 and therefore, would be a matter of evidence, as that position is not on record.

6] This being the position, I do not see any infirmity in the impugned order passed by the learned Sessions Court. The writ petition is without any merits and is accordingly dismissed with no order as to costs.

JUDGE

Rvjalit

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VASANTRAO JALIT
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Signing Date:01.02.2022 15:44