

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1136 OF 2020

SADASHIV S/O. JAYWANT FARANDE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. N.B. Narwade, Advocate for the Applicant.
Mr. A.R. Kale, APP, for the Respondent – State.
Mr. Amarjit More, PSI, Karjat Police Station, Dist.
Ahmednagar present.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : JANUARY 10, 2023

PER COURT :

1. This is an application under Section 482 of Cr.P.C. for quashing the FIR No. 440/2019 registered at Karjat Police Station, Karjat, Dist. Ahmednagar and consequential proceedings bearing R.C.C. No. 99/2020 pending on the file of learned JMFC, Karjat for offences punishable under Sections 406, 409 read with Section 34 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant and learned APP for Respondent – State. We have perused the records and considered the submissions advanced by learned Counsel appearing for respective parties.

3. The short point for our consideration is, whether the first information report and the other material collected in the course of investigation constitute offence under Section 406 and 409 of the IPC.

4. The records indicate that the applicant was working as Branch Manager of Parner Taluka Sainik Sahakari Bank, Branch Karjat from 2010 till 2020. One Dipak Ramdas Anasare was working as the Deputy Manager in the said bank. The applicant herein lodged the first information report on 29th August, 2019 alleging that there were some shortcomings in the transactions disbursed under Sanjay Gandhi Niradhar Yojana. The applicant had issued notice to Dipak R. Anasare, who was in-charge of clearing the cheaques, loan deposit, etc and conducted inquiry in respect of the said shortcomings. The applicant learnt that said Dipak Anasare had misappropriated an amount of Rs. 1,46,000/- which was deposited by Naib Tahsildar under Sanjay Gandhi Niradhar Yojana. The said amount was to be disbursed to the respective beneficiaries as per the list forwarded by the Naib Tahsildar. It was revealed

that instead of crediting the said amount in the account of said beneficiaries, the co-accused Dipak Anasare had credited the said amount in his account as well as in the accounts of his family members. It was also revealed that Dipak Anasare had also withdrawn amount from the accounts of the beneficiaries on the basis of forged withdrawal slips.

5. On the basis of the first information report, the aforestated crime came to be registered against Dipak Anasare. In the course of investigation, the applicant herein, who was the first informant, came to be arrayed as an accused. The investigation has been completed and the charge-sheet has been filed against the applicant as well as the co-accused Dipak Anasare for committing offences punishable under Sections 406, 409 read with 34 of the IPC.

6. The Applicant, as a banker, is charged of offence for criminal breach of trust. In order to attract such offence, apart from entrustment, the other essential ingredients which need to be satisfied are: that person has dishonestly misappropriated or converted the property to his own use or dishonestly

uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, as contemplated by Section 405 of IPC.

7. The records reveal that the Naib Tahsildar had forwarded cheques along with a list of beneficiaries under Sanjay Gandhi Niradhar Yojana. The said amount was to be credited in the account of the respective beneficiaries as per the list submitted by the Naib Tahsildar. The records indicate that it was the duty of Dipak Anasare to credit the amount into the respective accounts of the beneficiaries as per the list submitted by the Naib Tahsildar. Accordingly, the co-accused Dipak Anasare had transferred the amount in the accounts of the some of the beneficiaries.

8. The records reveal that one of the customers Sangita Choudhary was having her account no. 6212 and Parubai Barkade was having account no. 2313 in the said bank. The material on record *prima facie* reveals that Dipak Anasare had credited an amount of Rs. 1,46,000/- in the account of said Sangita Choudhary, Parubai Barkade, and in his own account though said Sangita and

Parubai were not beneficiaries under the scheme. The only allegation against the applicant is that he had approved the deposit of the said amount in the account of Sangita Choudhary, Parubai Barkde and co-accused Dipak Anasare.

9. Learned APP states that the applicant being the Branch Manager was required to exercise proper supervision and control over the subordinate staff. It is to be noted that the amount deposited in the accounts of Sangita and Parubai has been subsequently transferred in the account of the applicant and his family members. The said amount was recovered from the Dipak Anasare. There is *prima facie* no material on record to indicate that the applicant is the beneficiary or that he has misappropriated or converted the said amount to his own use. The allegations against the applicant may be at the most constitute negligence. Suffice it to say that mere negligence would not constitute offence under Section 406 and 409 IPC.

10. The first information report as well as the other material collected in the course of investigation does not disclose criminal breach of trust as defined

under Section 406 of the Indian Penal Code. The present case is squarely covered by illustration (3) in the case of State of Haryana Vs. Bhajan lal reported in AIR 1992 SC 604. In such circumstances, continuance of proceedings against the applicant would be sheer abuse of the process of law.

11. Under the circumstances, the application is allowed in terms of prayer clause 'B'. Consequently, FIR No. 440/2019 registered at Karjat Police Station, Karjat, Dist. Ahmednagar and consequential proceedings bearing R.C.C. No. 99/2020 pending on the file of learned JMFC, Karjat for offences punishable under Sections 406, 409 read with Section 34 of the Indian Penal Code, are hereby quashed and set aside *qua* the applicant.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)