

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1505 OF 2019

DEVIDAS S/O. VASUDEO KULKARNI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 1538 OF 2019

SAROJ PRASAD CHAUDHARY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. R. S. Deshmukkh, Senior Advocate a/w Ms. R. R. Jaiswal i/by Mr. D.R. Desmukkh, Advocate for Petitioner in WP/1505/2019 & for Respondent No. 3 in WP/1538/2019.
Mr. S. V. Mundhe, Advocate for Petitioner in WP/1538/2019 & for Respondent No. 3 in WP/1505/2019.
Mr. S. N. Morampalle, APP for Respondent No. 1.
Mr. S. S. Shaikh, Advocate for Respondent No. 2.

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CORAM : R.M. JOSHI, J

DATE : AUGUST 09, 2023

PER COURT :

1. The complaint involved in these Petitions is a classic example as to how bank officers can be harassed by making false complaint to rake vengeance.

2. The Petitioners were officers of State Bank of India, Kalamb Branch, District Osmanabad, Maharashtra. The Respondent No. 2 is a fruit supplier and had account in the said Branch, who lodged complaint with

JMFC, Kallam being Misc. Application No. 238/2011 stating that there was misplacement of cheque issued by him payable to one Badruddin. Thereafter, due to missing of cheque, another cheque was issued for the same amount of Rs. 50,000/-. He further alleged that on 04.06.2011 he issued another cheque of Rs. 40,000/- to Krishna fruit merchant and for transfer of said amount cheque of sum of Rs. 40,000/- was deposited. It is alleged that Petitioners deliberately avoided to pay Rs. 40,000/- to him, which was deposited by him in his account and thereby committed an offence punishable under Sections 406 read with Section 34 of IPC. Pursuant to the complaint made by him, a direction was issued for an inquiry under Section 202 of Cr.P.C. and was conducted by ASI Baig. In his report submitted to the learned JMFC it is stated that on 04.06.2011 the complainant had brought the sum of Rs. 40,000/- in cash and also deposited the cheque of Rs. 40,000/-. It is further stated therein that acknowledgment was given in respect of the cheque as well as cash received by Petitioner - Chaudhary. It is claimed that this was witnessed by Indrajit Gaikwad. Learned trial Court on the basis of complaint, verification and examination of

Indrajit, passed order of issuance of process and registered case as R.C.C. No. 58/2016.

3. Perusal of the complaint filed before JMFC, Kallam shows that the grievance of the complainant/Respondent No. 2 is essentially in respect of misplacement of cheque issued to Krishna Fruit Merchant and in paragraph 4 of the complaint, it is alleged that complainant deposited Rs. 40,000/- in his account and that though such amount was available, the Bank did not make the same available in time and thereby criminal breach of trust is committed by accused. It is alleged that the said amount was used for benefit of Bank.

4. Having regard to the aforestated complaint, when report submitted under Section 202 of Cr.P.C of ASI Baig is perused, then it appears that it is observed therein that the Accused person was given Rs. 40,000/- by complainant but the same was not deposited in the account of complainant or credited to Shri. Krishna Fruit Merchant. It is further observed therein that the Petitioner Kulkarni had accepted about misplacement of the cheque of complainant but Bank does

not admit technical error. With these observations, it is reported that offence under Section 406 of IPC has been committed.

5. In order to appreciate this report in the light of the contents of the complaint, learned APP was called upon to show as to whether there is any evidence about a sum of Rs. 40,000/- being deposited by the complainant on 04.06.2011. Learned APP from police papers has relied upon a paying slip to submit that the said document indicates that the deposits of Rs. 40,000/- in cash. However, perusal of the said document clearly shows that it is not a paying slip in respect of deposit of the cash but the cheque no. 985426. Perusal of the complaint indicates that on that day a cheque of Rs. 40,000/- bearing no. 985426 was submitted in the bank. The paying slip is having acknowledgment of the said deposit of cheque. Most surprisingly, without their being *iota* of evidence that there was any cash was deposited, the ASI of the concerned police station submits report to the concerned JMFC to the effect that offence is made out under Section 406 of IPC.

6. Section 405 of IPC defines criminal breach of trust as under:

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"

In order to constitute an offence of criminal breach of trust, there must be dishonest misappropriation of property entrusted or its disposal in violation of any direction of law. Needless to say that *mens rea* is relevant in such act. Question arises as to whether such intention can be attributed against accused in case of misplacement of cheque (which is property entrusted). The fact of misplacement of cheque itself indicates that dishonest intention to appropriate property is absent.

7. Perusal of the record indicates that the cheque issued by the complainant was misplaced. Even if

this allegation is accepted, at the most this will only amount deficiency in service but not an offence. If the bank employees are permitted to be harassed in such manner, it would be difficult for banking sector to function. In considered view of this Court, present complaint is nothing but an abuse of process of Court. Hence, for want of an offence being made out against Petitioners and since, the complaint is apparently instituted by malice, instant case is duly covered by judgment of Hon'ble Apex Court in case of State of Haryana Vs. Ch. Bhajan Lal and Ors, 1992 AIR 604 and fall within illustrations (a) & (g).

8. Hence, Petitions are allowed in terms of prayer clauses 'C', 'D' & 'E'.

(R.M. JOSHI, J.)

Malani