

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.204 OF 2023

SHAM BHIVRAO THOMBARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Ms. Akshara Madake h/f Mr. Madake
Datta A.

APP for Respondent-State : Ms. V. N. Patil-Jadhav.

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CORAM : S. G. MEHARE, J.
DATE : 19.08.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant has impugned the order dated 28.03.2022 by the learned Additional Sessions Judge, Beed, below Exh.7, in Special Case No.89 of 2021, rejecting the application for discharge.
3. Learned counsel for the applicant has vehemently argued that the applicant is neither the Director nor the employee of the so called Shubhkalyan Multi State Co-Operative Credit Society, Hawargaon. However, he being the brother of one of the Director has been falsely arraigned as an accused in the crime. His brother is serving in one sugar factory in accounts

department. She read the statement of one witness namely Ranjit Sudamrao Muley and vehemently argued that he has made a wrong statement. In fact, the applicant was never present at Shubhkalyan Multi State Co-Operative Credit Society. The material collected by the Investigating Officer is not sufficient to frame the charge against him. Her arguments reveals that she has denied the presence of the applicant at credit society and tried to convince the Court that he has no concern with the Co-operative society. He cannot be arraigned as an accused in the present crime. Hence, he is liable to be discharged.

4. Per contra, the learned APP would submit that various sections of the IPC have also been applied in the case along with the provisions of the M.P.I.D. Act. Whether he has concern or not with the said Co-operative society may be considered at the time of framing of charge. Even the Court would satisfy that he had no concern with the said society, but, considering the statement of Ranjit Sudamrao Muley, he may not be absolved from the offences punishable under the provisions of the IPC. She would submit that the statement of the witness is very specific that when he had been to the said society, the applicant was present there and he along with his

brother told him that on investment in the said society, he would get 60 to 80 % interest per annum. The statement of the victim cannot be thrown at this juncture. The witness has specifically named the applicant with the role attributed to him. Hence, the impugned order is legal, correct and proper.

5. Section 227 of the Cr.P.C. reads thus ;

“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

6. For discharge, the Court shall be satisfied that after considering the record of the case and the documents submitted therewith, there are no sufficient grounds for proceeding against the accused. The arguments are in the tone of plea of alibi. Even if, the applicant has no concern with the institution, the specific allegations have been levelled against the applicant that when the investor Ranjit Muley had been to the society, he and his brother told him about the rate of interest and they have also gave information about the Directors of the said branch. As the applicant has the defence of alibi that cannot be accepted at this juncture ignoring the

material available on record against him. The accused may be charged for multiple sections under multiple laws. Even it is presumed that the applicant has no concern as required under Section 3 of the M.P.I.D. Act with the financial establishment, it cannot be said that he did not commit the crime under the another Act. *Prima facie* material is there against the applicant that satisfy the Trial Court that there is a sufficient material to proceed against the applicant.

7. Perused the impugned order and this Court is satisfied that there is no apparent error on the face of the record. The impugned order is legal, correct and proper and does not warrant interference. Hence, the following order :

ORDER

Criminal Revision Application stands dismissed.

(S. G. MEHARE, J.)

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vmk/-