

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

CRIMINAL WRIT PETITION NO.1645 OF 2016

OMNARAYAN S/O CHANDANLAL JAISWAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Petitioners : Mr. Z. H. Farooqui h/f Mr.
S. P. Salgar

APP for Respondents: Mrs. R. P. Gour

Advocate for Respondent No. 2 : Mr. Gopal C. Navandar

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CORAM : R.M. JOSHI, J

DATE : JULY 18, 2023

PER COURT :

1. This Petition takes exception to the order dated 28th November, 2016 passed by learned Additional Sessions Judge, Ambajogai in Revision Application No. 78/2013 wherein order dated 04th October, 2013 of issuance of process for the offences punishable under Sections 409 and 418 of IPC, passed in R.C.C. No. 174/2013 was unsuccessfully challenged.

2. The facts which led to filing of present Petition can be narrated in brief as follows:

Respondent No. 2 has filed private complaint against the Petitioners, who are President and Secretary/Manager of Shree Mauli Multi State Credit Co-

op. Society (for short '**Society**') with the allegation that Respondent No. 2 has deposited a sum of Rs. 16,07,232/- in the fixed deposit for the period of 13 months, however, on completion of the said period of deposit, amount with interest was not repaid by the Petitioners. It is the contention of the Petitioners that both societies are interlinked and President of Respondent No. 2 has started the Petitioner society. It is claimed that Petitioner No. 1 was previously worked with the Respondent No. 2 and being impressed with his work he was made President of the said society. It is alleged there was loss caused to the Respondent No. 2 society and therefore, the Petitioner society had given Rs. 33,19,934/- to the Respondent No. 2 from time to time by obtaining cheques. However, the dispute about the recovery of the said amount is pending. Petition is filed taking exception to the impugned orders on the ground specifically set out in the Petition.

3. Learned Counsel for the Petitioners states that the present dispute is civil in nature and that the criminal colour has been given thereto. It is specifically contended that essential ingredients in

order to constitute offence punishable under Sections 409 and 418 of IPC is not made out and in spite of the same, learned trial Court has issued process against them. It is further contended that the Revisional Court has failed to take into consideration the aforestated important aspects and has mechanically rejected the revision application.

4. Learned Counsel for the Respondent No. 2 supported the impugned order.

5. Perusal of the complaint made before learned JMFC, Parli clearly shows that there is specific allegation against the Petitioners that a total sum of Rs. 16,07,232/- was deposited with the Society for the period of 13 months. It is further averred that after completion of the said period the amount deposited was not returned with interest. There is specific allegation that there is a breach of trust committed by the Petitioners. To support the said submission, the receipts of the fixed deposits were placed on record. Perusal of the order passed by the learned trial Court shows that the complaint as well as the documents placed on record were duly considered while passing the

order of issuance of process. It is also pertinent to note that the learned trial Court has observed that the complaint does not disclose any offence of criminal conspiracy and hence, no process was issued in respect of the said offence. Thus, on the face of it there is no error seems to have been committed by the learned trial Court in passing order of issuance of process.

6. As far as order passed by learned Additional Sessions Judge in Criminal Revision No. 78/2013 is concerned, considering the nature of proceeding under Section 397 of Cr.P.C, it was only open for the Revisional Court to decide whether there is exercise of jurisdiction not vested or non-exercise of the same by Magistrate. It was never open for the Revisional Court to reappreciate the material before Magistrate and to record different findings thereon. The Revisional Court, therefore, has rightly rejected the Revision Application.

7. Though it is submitted by Counsel for the Petitioners that the civil dispute is sought to be converted into criminal but such submissions cannot be accepted in each case, more particularly, when the

submissions in the complaint *prima facie* shows that it is a case of breach of trust. The defences taken by the Petitioners may be available at the time of trial, however, they cannot be considered for the purpose of quashment of the proceedings.

8. Considering the aforesaid facts, Petitioner have failed to make out any case to cause interference in the impugned orders. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani