AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4287 OF 2018

Bapuso Narasu Kognale & Ors. … Petitioners
V/s.
The State of Maharashtra … Respondent

Mr. Amitkumar D. Sale with Mr. Tukaram Shendge for the petitioners.
Mr. A.R. Patil, APP for respondent/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 23, 2023

P.C.:

1. The writ petition is directed against the order dated 24th July 2018 passed by the Additional Sessions Judge – 3, Sangli in Criminal Revision Application No.141 of 2013 confirming judgment and order dated 12th August 2013 passed by the Judicial Magistrate First Class, Miraj below Exhibit 46 in Regular Criminal Case No.305 of 2012 rejecting discharge application of the petitioners.

2. Mr. Sale, learned advocate for the petitioners, states that during the pendency of the writ petition, petitioners nos.3 and 6 have passed away. The writ petition, therefore, abates as against petitioners nos.3 and 6.

3. The petitioners are managing committee members of a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960, carrying on the business of advancing loans to the members and accepting deposits from the members.

4. The first information report came to be lodged against accused no.14, and the petitioners alleged that accused no.14 was collecting small deposits from time to time and was making an entry in the passbook acknowledging receipt of amounts from time to time. It was alleged that on 26th August 2009, accused no.14 issued a new passbook to the informant showing a balance of Rs.45,000/-. The informant thereafter started depositing the amount of Rs.200/- every day with accused no.14. On 13th November 2010, there was a discussion in the village that accused no.14 (Pigmi Agent) had absconded. The informant came to know that accused no.14 had accepted such deposits from various other people in the village. It is alleged that on inquiry with the credit society, it was revealed that out of Rs.12 lakh paid by the complainant, an amount of Rs.3 lakh was deposited by accused no.14 with the credit society. According to the informant, the petitioners denied their liability for a deposit of Rs.12 lakh. It is alleged that his wife had deposited an amount of Rs.5,50,500/- with accused no.14, but the actual amount transferred to her account was to the tune of Rs.1,44,000/-. Therefore, the informant filed a complaint that the managing committee members and Pigmi Agent misappropriated the amount. It is alleged that accused no.13 is the nephew of the Chairman, and due to their omission to take action, the complainant suffered a loss.

5. The investigating agency carried out an investigation and filed a charge sheet.

6. The petitioners, therefore, applied for discharge. The Trial Court rejected the application, which the Revisional Court has confirmed.

7. On perusal of the reasoning by the Courts below, it appears that the discharge application was rejected on the following grounds: (i) the absconding accused (Pigmi Agent) was authorized by the cooperative credit society of which petitioners are managing committee members and office bearers; and (ii) passbook seems to have been issued by the society.

8. On perusal of the statement of witnesses, it is evident that the petitioners were roped in based on the supplementary statement recorded on 6th August 2012. It appears that the role attributed to the petitioners is that due to their inaction, misappropriation of the amount by accused no.14 took place. On the other hand, the prosecution case is that misappropriation occurred due to the inaction of the managing committee members
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9. Regarding the reasons assigned in the orders by the Courts below, the essential ingredients of the offence of section 420 of Penal Code, namely the dishonest intention of the petitioners at the inception of the transaction, are absent. Neither in the first information report nor in the statements of witnesses nor supplementary statements has it been stated that the petitioners had played any role before the informant or other victims invested the amount. The liability of commission of offence seems to have been foisted on the petitioners based on the act of non-feasance by the petitioners.

10. For the acts of non-feasance of the petitioners, the provisions of the Maharashtra Cooperative Societies Act, 1960 provide a remedy in the form of an audit under section 81, the preliminary inquiry under section 83 and findings of loss caused to the society under section 88. The amended provisions of the Maharashtra Cooperative Societies Act, 1960, in the form of section 81(5)(b), cast liability on the auditor after being satisfied that the acts of managing committee members have caused loss to the society which empowers the auditor to launch a prosecution. Additionally, in the case of finding in the inquiry of section 88, the offence contemplated under section 148 of the Maharashtra Cooperative Societies Act, 1960, can be registered. However, in the present case, there is neither an audit report nor any material which shows the active participation of the petitioners in the offence alleged against them. Mere inaction on their part to prevent the commission of the offence by accused no.14 will only make them liable if essential ingredients of an offence under sections 420, 406, 504, 467 and 471 are made out.

11. Neither the first information report nor the statements of witnesses or supplementary statements of the witnesses alleged payment made to the petitioners or payment made to accused no.14 at the instance of the petitioners. Instead, reading the statement and material on record, it appears that accused no.14 forged a passbook to depict wrong entries inconsistent with the record of the society.

12. In the absence of material to link petitioners with the acts committed by accused no.14, there is no material on record to fulfill the ingredients of the offences alleged against the petitioners. Both the Courts below, therefore, erred in rejecting the application for discharge. Therefore, there is no ground made out by the prosecution to proceed against the petitioners.

13. However, it is made clear that this Court has not considered the civil liability of the petitioners for repayment of the amount received by the society or accused no. 14.

14. The writ petition is, therefore, allowed in terms of prayer clause (a). No costs.

(AMIT BORKAR, J.)