

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 522 OF 2022

Ajay Mataprashad Seth
Aged about 44 years, Occ:
Residing at 604, C Wing,
Avishkar Garden,
Poonam Vihar, Mira Road (East),
Dist. Pune - 401107.

.Appellant

Vs.

The State of Maharashtra
Through Economic Offence Wing,
Crime Branch, through the office of
Public Prosecutor, High Court,
Bombay, Mumbai - 400001.

.Respondent

Mr. Anjani Kumar Singh a/w. Mr. Siddhesh Sutar i/b. Mr.
Swarnangshu Shekhar for the Appellant/Applicant.
Ms. S. D. Shinde, APP for the State.
API-Vinayak Patil, E.O.W. Unit-8, Mumbai is present.

**CORAM : SUNIL B. SHUKRE AND
KAMAL KHATA, JJ.**

DATE : 23 MARCH, 2023

ORAL JUDGMENT: (PER:- SUNIL B. SHUKRE, J)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

3. On going through the impugned order, rejecting the Application of the Appellant for discharging him from the present crime in terms of Section 239 of Code of Criminal Procedure, 1973 [for short "**Cr.PC**"], we find that there are certain aspects of the matter, crucial to find out the role and the involvement of the present Appellant, have not been considered by the learned trial Judge.

4. The allegations against the present Appellant are that for a very limited period of time i.e. for about one month, he was Director of Dhanalaxmi Cooperative Credit Society [for short "**the Credit Society**"], and during that period he had accepted certain deposits from its depositors but did not return them as promised by the Credit Society and thus he alongwith Credit Society committed fraudulent defaults in repaying the amounts taken from the members of public and this Appellant being Director of the Credit Society was involved in some of these fraudulent activities.

5. The contention of the learned counsel for the Appellant is that the Appellant's name was shown as Director of Credit Society only for a period of one month i.e. from 25th

August, 2008 to 26th September, 2008, and it was so shown without knowledge of the Appellant and that there was no application or request whatsoever made by the Appellant for inclusion of his name as Director of the Credit Co-operative Society. He also submits that there is no resolution of the Society which is brought on record and which shows that the Appellant was inducted as Director of the Society for a period of about one month. He also submits that even if it is assumed, just for the sake of argument, that the Appellant had some knowledge about his Directorship in the Credit Society for a temporary period of time, such knowledge by itself, would not be sufficient for attributing fraudulent acts committed by the Society and its office bearers to the Appellant without there being any incriminating material showing the fact that the Appellant during the relevant time had played active role in accepting deposits, disbursing loans etc. He submits that there are no resolutions taken in this regard to which this Appellant has been shown to be a party.

6. According to learned APP, there is sufficient material available on record, which shows that the Appellant had knowledge about his being Director in the said Society, as there

are minutes of certain meetings, wherein the Appellant's presence has been noted. In support, she has produced before us original minute book of the Society, containing a page bearing signature of the Appellant. She submits that this minute book is made part of charge-sheet filed against the Appellant.

7. We find that even though there is a passing reference to the seizure of minutes book of the Society, in the index of the charge-sheet, the minutes book, which constitutes documentary evidence, has not been filed alongwith the charge-sheet and now it is sought to be used against the Appellant. If it is so, a copy of the same ought to have been furnished to the Appellant. Admittedly, its copy has not been furnished to the Appellant and therefore, as of now, we do not think that any such evidence as in the nature of minutes book can be used against the Appellant by the prosecution. It appears to us that this aspect of the matter has not been considered, in any manner, by the trial Court and had it been considered by it, perhaps the result of the Application filed by the Appellant seeking discharge from the case would have been probably different.

8. Then, we also find that the trial Court has not considered sufficiency of the material brought on record by the prosecution showing involvement of the Appellant in the offences registered against him.

9. There must be evidence available on record which *prima-facie* shows that that the Accused/Appellant had knowingly and willfully allowed himself to be part of the design of the office bearers of the Co-operative Credit Society to commit defaults in repayment of sums of money to its investors. For that purpose, it is necessary for the prosecution to produce on record some documents and also circumstances from which a reasonable inference, albeit *prima-facie*, can be drawn about the knowledge of the Appellant. It may be noted here that Appellant's mere presence and that too for a period of just about one month on the Board of Directors would not be enough to *prima-facie* implicate him in a serious crime of this nature.

10. These aspects of the case ought to have been appropriately considered by the trial Court, but they have not been. In the result, we find that the impugned order, which ignores material aspects of the case, cannot be sustained in the eyes of law. It deserves to be quashed and set aside.

11. The Appeal is partly allowed.

12. The impugned order is hereby quashed and set aside. The matter is remanded back to the trial Court for fresh consideration and decision on application of the Appellant vide Exhibit No. 133 in accordance with law. Decision shall be taken by the trial Court after giving due opportunity of hearing to the Appellant and the learned APP for the State and as expeditiously as possible, preferably within 12 weeks from the date of receipt of this order.

13. All questions and contentions are kept open.

14. Rule is made absolute in the above terms.

(KAMAL KHATA J.)

(SUNIL B. SHUKRE, J.)