

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

CRIMINAL WRIT PETITION NO. 5317 OF 2021

1. Poise Securities and Exchange Ltd.
Through its Director Mayur Parekh,
48/Bank Street, Khatau Building,
Ground Floor, Fort,
Mumbai, Maharashtra 400001.
2. Bipin S. Doshi
A/102, Godavari Phirojshah Mehta
Street, Opp Jain Upasraya
Santacruz(W), Mumbai,
Maharashtra 400054.
3. Mayur M Parekh
F/501, Vishal Apartments, M.V.Road,
Andheri (East), Mumbai,
Maharashtra 400069.
4. Leena N Parekh
B/45, 4th floor, Sea Lord,
177 Cuff Parade,
Opp. Taj President Hotel,
Mumbai, Maharashtra 400005.
5. Ketan Manharlal Parekh
1211, B Wing, Sunkersett Palace,
Javaji dAdaji Road, Near Matru
Mandir, Nana Chowk, Grant Road,
Mumbai, Maharashtra 400007.

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6. Sudha Bipin Doshi

A/102, Godavari Phiroj Shah Mehta
Street, Opp Jain Upasraya Santacruz (W),
Mumbai, Maharashtra 400054.

7. Bipin Shah

B/103, Nilesh Apt. Haridas Nagar,
Shimpoli Road, Borivali West,
Mumbai, Maharashtra 400092.

... Petitioners

Versus

1. State of Maharashtra

Through Gamdevi Police Station

2. Shree Labh Co-operative Bank Ltd.

(Formerly Alen Co-op. Bank Ltd.)

Through Custodian Sunil T Kothawale
office at: C/O. Deputy Registrar,
R/S ward,

303, A-Wing, B.M.C. Godown Building,
90 ft. Road, Thakur complex,

Kandivali(E), Mumbai 400101

... Respondents

Mr Prashant Parsurampururia for the Petitioners.

Mr J.P. Yagnik, APP for the State.

Mr Milan Desai for Respondent No.2.

Dy. Registrar, Mr Sunil Kothawale Co-op. Society,
K/West, present in Court.

***CORAM: NITIN W. SAMBRE &
R. N. LADDHA, JJ.***

DATE : 19th JULY 2023

Order (Per R. N. Laddha, J.) :-

Heard learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned counsel for the parties.

3. The Petitioners have filed this Criminal Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, to quash FIR bearing No.539/1997 dated 29th December 1997 registered at Gamdevi Police Station, Mumbai, for the offences punishable under Sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code, and the proceedings arising from it.

4. When this petition was placed before us, counsel for the parties jointly stated that the parties have reached an amicable settlement of their dispute by signing a Memorandum of Understanding (MOU) dated 7 July 2021, and have agreed to terms of the settlement. A copy of the MOU is annexed to this

petition.

5. The offence against the Petitioners arose when they pledged 21733 share certificates worth of Rs.20,81,000/- as a collateral for a loan of Rs.10,00,000/- on 23 September 1996. It is alleged that the accused persons took back and sold 7200 of these certificates and issued post dated cheques to the Respondent-Bank. Another loan, on 24 September 1996, was sanctioned, 12975 share certificates worth of Rs.19,60,000/- for which were pledged. Out of these certificates, 8100 were sold by the accused persons against post dated cheques, which were later dishonoured.

6. It reveals from the record that the Respondent-Bank that filed complaint has gone into liquidation. The liquidator reached a settlement before the Maharashtra Co-operative Appellate Court in Appeal Nos.34 and 35 of 2015, which were initiated by the Respondent-Bank. Additionally, a Memorandum of Understanding was signed between the parties on 7 July 2021, which reads thus:

“1. The Appellant had filed two disputes bearing CC No.II/221 of 1997 and CC No.II/244 Of 1997 before the second co-operative court, Mumbai against the Respondents for reliefs mentioned therein. The Respondents herein filed their counter-claim in the above proceedings. The Appellant obtained ex-parte order on 25

April 1997 freezing the assets of all the Respondents including the deposit of Respondent No. 1 lying with the National Stock Exchange of India Ltd. ("NSE"). Respondent No. 1 moved application for modification of above order. By order dated 6 June 1997, the Co-operative court modified the order thereby restricting the same to the deposits of Respondent No. 1 lying with NSE. An amount of Rs. 28,49,445.47/- in CC No. II/ 221 of 1997 and an amount of Rs. 23,54,328.20/- in CC No. II / 244 of 1997 lies frozen since 1997. Vide letter dated 11 June 1997, NSE has confirmed that an aggregate amount of Rs.52,03,774/- has been kept aside with them under the lien of Appellant Bank.

2. By an order dated 21 November 2007 passed by the IIInd Co-operative Court, Mumbai, the said amount was directed to be deposited by the NSE with the Maharashtra State Co-Op Bank. Writ Petition bearing No. 1332/1999 came to be filed by NSE whereby vide order dated 29 August 2008, NSE was directed to deposit the above amount with the State Bank of India, BKC Branch for a three year period to be renewed from time to time until further orders.

3. NSE, vide its reply dated 22 August 2014 addressed to Appellant Bank has confirmed that the deposit now stands at Rs.81,41,603.69/-, also forwarding a copy of the renewed FD receipt till 4 August 2017.

4. The Appellant Bank and the Respondents have decided to amicably settle their disputes and accordingly are entering into the present MOU.

5. It is agreed between the parties that the Respondents have no objection to the Appellant Bank seeking release of the above amounts, with interest, lying with State Bank of India, BKC Branch deposited by NSIE, in its favour, subject to adjustment of the counter claim of Respondent No. 1 8 7 and implementation of arbitration award 20 of 1997 passed on 24th November, 1997 before NSEIL (National Stock Exchange of India Ltd).

6. The parties jointly and severally undertake to comply with, fulfil, observe and perform all such other things as may be necessary for giving effect to the present Memorandum of Understanding.

Mumbai dated this 7th day of July, 2021.”

7. On 4 July 2023, the learned counsel for the Petitioners/accused in support of prayer for quashing had submitted that the Petitioners are willing to relinquish their claim allowing in the ongoing proceedings between the parties. They also agreed not to enforce Arbitration Award No. 20 of 1997 passed on 24 November 1997, which was recorded in paragraph 5 of this Court’s order, which reads thus:

“Counsel for the accused persons in support of prayer for quashing has urged that the Petitioners are willing to give up their claim allowed in the proceedings interse between the parties, so also, they shall not be implementing Arbitration Award No.20 of 1997 delivered on 24 November 1997. Since the aforesaid statement by counsel for the Petitioners at the behest of the Petitioners who are present in the Court is made on instructions, same is accepted as an undertaking.”

8. The record shows that the liquidator appointed by the Registrar’s order under Section 105 of the Maharashtra Co-operative Societies Act filed consent terms for quashing. According to the liquidator, if the amount of the fixed deposit in the MOU is received, it will be used to settle the Bank’s liabilities. According to learned counsel for the liquidator, the provisions of Section 105 and Clause (a) read with (g) of the Act empowers the liquidator to extend consent in criminal proceedings. The record also show that the custodian/

liquidator received approval for the settlement from the competent authority. Mr Sunil Kothawale, when questioned, reiterated the statement in his affidavit. He was identified by his counsel. A copy of his Aadhar Card is placed on record. The learned APP has verified the Aadhar Card of Liquidator Mr Sunil Kothawale. The consent affidavit filed on behalf of Respondent No.2 supports the prayer to quash the FIR. Having considered these facts and the arguments of the parties, there seems to be no impediment in allowing this petition.

9. As we expressed our opinion, the learned counsel for the Petitioners, on instructions, submitted that the Petitioners would pay a cost of Rs.25,000/- each to Kirtikar Law Library, Mumbai. The statement is accepted as an undertaking given to this Court. We, therefore, direct the Petitioners to pay the cost of Rs.25,000/- each within three weeks of this order being uploaded.

10. Accordingly, we allow this Criminal Writ Petition in terms of prayer clause (b), which reads thus:

“This Hon’ble Court be pleased to quash FIR No. 539/1997 registered by Gamdevi Police Station, Mumbai against the Petitioners and all further proceedings in C.C.

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*No. 162/P/ 2000 pending before the learned MM, 40th
Girgaon Court, Mumbai against the Petitioners.”*

11. Rule is made absolute in these terms and the present Writ Petition stands disposed of subject to payment of the cost as directed above.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

Lata.S.Panjwani, P.S.