IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5064 OF 2021

Mr. Dibakar Chakrabarti
of Indian Inhabitant, Age 78 years,
Occ : Retired, residing at 1/208, Naktala,
West Bengal – 700 047. .. Petitioner

Vs.

1. The State of Maharashtra
Through City Police Station
Mahim Police Station, Mumbai.

2. Lata Kamal Bajoria
Aged 56, Occ : Housewife,
residing at 1104/A, Highland Park,
Oshiwara, Lokhandwala Complex,
Andheri (W), Mumbai – 400 053. .. Respondents

- Mr. A.S. Ramesan, for the Petitioner.
- Mr. J.P. Yagnik, APP for Respondent No.1-State.
- Ms. Shraddha Sawant, for Respondent No.2.

CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, JJ.

DATE : 27th MARCH, 2023.

P.C. :

1. Rule. Rule made returnable forthwith by consent of the learned

counsel for the parties.

2. The allegations are that, at the relevant time i.e. on 01.02.2011, the petitioner was Incharge of Mahim Branch of Indian Overseas Bank and was occupying position of Assistant General Manager at that time and as a Branch Manager of Mahim Branch, the petitioner had helped Bimalkumar Bajoria and his wife Sangeeta Bajoria to fraudulently withdraw an amount of Rs.11,60,931/- from the joint account of the Respondent No.2 and her husband and transferred it to the accounts as desired by main accused Bimalkumar Bajoria. It is also alleged that Bimalkumar Bajoria and the petitioner hailed from Calcutta, and therefore, were on good terms with each other. It is further alleged that, as per the rule of Indian Overseas Bank, no amount exceeding an amount of Rs.1000/- can be withdrawn from any savings account on the strength of cash withdrawal slip and any such amount exceeding Rs.1000/- is to be withdrawn, a cheque is required to be used.

3. According to the learned counsel for the petitioner, the petitioner was only overall Incharge of the affairs of Mahim Branch and was nowhere involved in sanctioning the concerned withdrawal slips and in support thereof, he invites our attention to the statements of one Ravindranath Kamat, who was the final sanctioning authority.

4. According to the learned counsel for Respondent No.2, it was necessary for the Investigating Officer to have made Ravindranath Kamat, as an accused as he was already party to the fraudulent transaction and it was only because of his sanctioning the withdrawal of huge amounts on the basis of cash withdrawal slips, this fraud could be committed by the main accused. She also submits that the petitioner being the Branch Manager too was responsible for the fraudulent transactions.

5. On going through the evidence collected by the Investigating Officer during the course of investigation and the statement of Ravindranath Kamat in particular, we find that as far as the present petitioner is concerned, there is no material available on record to proceed further against the petitioner. There is nothing on record which even remotely suggests that the petitioner had played some role in according to the sanction for withdrawal of huge amounts from the savings bank account of Respondent No.2 on the basis of cash withdrawal slips. These cash withdrawal slips, according to the complainant i.e. Respondent No.2, were signed by Bimalkumar Bajoria and therefore, it was necessary for the sanctioning authority to properly verify the signature and then only permit the cash withdrawals, but that has not been done by the sanctioning authority. We find substance

in this submission of learned counsel for Respondent No.2. The sanctioning authority appears to have not exercised due diligence in verifying the correctness of the signatures appearing on the cash withdrawal slips, but for this negligence, the petitioner as per the material available on record, cannot be held responsible. We have already found that there is no material collected during the course of the investigation, which showed that that petitioner was the sanctioning authority, who played role in enabling the main accused to withdraw the amounts and transfer them to some other accounts from the savings bank account, which was not his saving bank account.

6. Learned APP for the State also could not shows existence of any material on the basis of which it could be said that there is a *prima facie* case for the offences which have been registered against the petitioner. It appears to us that the charge against the petitioner is groundless.

7. In the result, we are of the view that no trial can be held against the petitioner for the offences punishable under Sections 406, 409, 420, 465, 467 and 506 read with Section 120 of the Indian Penal Code, 1860 or any of them, and thus, this petition deserves to be allowed.

8. The petition is allowed in terms of prayer clause (b), which reads as under:-

> "That record and proceedings be called for and after perusing the same this Hon'le Court be pleased to plea order to quash and set aside Crime No.96/2018 and proceedings pending before the Ld. Magistrate, 9^{th} Court at Bandra, Mumbai."

9. Rule is made absolute in the above terms.

10. Writ Petition is disposed of.

[M.M. SATHAYE, J] **[SUNIL B. SHUKRE, J.]**