

GRM

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

CRIMINAL WRIT PETITION NO. 5450 OF 2017

Yashwant Jaywant Kanse ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr. Tushar Sonawane, Adv. for the Petitioner.

Ms. Anamika Malhotra, APP for the State/Respondent.

Mr. Amit A. Karande, Adv. for Respondent Nos. 2, 4, 7 to 10, 13 & 14.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 2, 2023

P.C. :

Heard.

2. The challenge in this writ petition is to the order passed by the Court of Judicial Magistrate First Class on application (Exhibit-13) in Criminal Case bearing No. 40/2011 and the order passed by the Court of Additional Sessions Judge, Baramati in Criminal Revision Application No. 30/2016 confirming the order passed by the learned Judicial Magistrate First Class.

3. The petitioner herein is the original complainant in Criminal Case No. 40/2011. The said criminal case has been filed against Walchandnagar Co-operative Housing Society and its 13 office bearers. In short, the case of petitioner/complainant is that the respondents/accused forged various documents including the Co-operative Court's Award and put the same to execution. After

having realized the petitioner/complainant to have been cheated by the respondents/accused, he filed an application seeking direction for investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (for short "**Cr.PC.**"). On investigation, the police authorities filed 'B' Summary Report. The petitioner/complainant was therefore given opportunity to lead the evidence in the matter. He therefore examined himself on oath. He then preferred application (Exhibit-13) for issuance of summons to the Superintendent of Co-operative Court, Pune, Manager Canara Bank, Branch Walchandnagar, Manager of Walchandnagar Co-operative Bank, etc. to produce certain documents as evidence during enquiry under Section 202 of Cr.PC. The Trial Court rejected the said application. Learned Additional Sessions Judge confirmed the said order. The petitioner/complainant is therefore before this court.

4. Learned Advocate for the petitioner/complainant reiterated the averments made in the petition. According to him, there were two disputes filed in the Co-operative Court. Those are Dispute Nos. 78/90 & 82/90. The Dispute No. 82/90 has only been decided and Award is shown to have been passed in the said dispute. The same is a forged one. The petitioner has moved an application to the Co-operative Court for obtaining certain documents in relation thereto. The petitioner has been informed that the entry of an Award passed in Dispute No. 82/90 has not been taken in the concerned register. In short, according to the petitioner, all the documents have been forged and recovery

proceedings have been initiated against the respondents/accused. In support of his case, the petitioner therefore preferred an application seeking witness summons to the authorities stated hereinabove. According to the learned Advocate, the said application ought to have been allowed. He therefore urged for allowing the writ petition.

5. Learned Advocate for the respondents/accused, would on the other hand, submit that the petitioner cries wolf. The petitioner has availed the loan. A recovery proceedings therefore came to be initiated against the petitioner and 44 others. The Co-operative Court has passed the Award way back in December 1995. The said Award was put to execution. The petitioner has repaid some amount due from him towards loan. Only with a view to avoid repayment of the loan amount, a false case has been filed. Both the Courts below were therefore justified in refusing to allow the application.

6. Considered the submissions advanced. Perused the documents relied on.

7. The petitioner is admittedly a member of Respondent No. 1 Co-operative Housing Society. He admits to have had received a loan of Rs. 8,000/- way back in December 1984. He however denied to have availed any further loan as has been shown by Respondent No. 1 Society. According to him, no Award has in fact been passed in Dispute No. 82/90. All the documents, the production of which was sought pursuant to the witness summons,

are therefore necessary to unearth the truth.

8. The proceeding under Dispute No. 82/90 was said to have been initiated against the petitioner and 44 others for recovery of a loan advanced to them. The Award in the said dispute came to be passed on 14/11/2006. The copy of Award dated 14/11/2006 in the said dispute along with the judgment dated 26/12/1995, on which said Award came to be passed, were on record of the Trial Court. It was under signature of a Judge, Co-operative Court No. 2, Pune. The petitioner in his complaint himself has admitted to have paid various sums/amount on number of times. The same suggests the petitioner to have repaid some amount pursuant to execution of the Award passed in Dispute No. 82/90. The petitioner proposes to make a capital of the fact that in the concerned register an entry, as regards the dispute (82/90) to have been disposed of, has not been recorded.

9. Learned Additional Sessions Judge has given sound reasons to uphold the order of rejection of the petitioner's application for issue of summons to the Nazir of Co-operative Court and the concerned Bank Managers. The same are reproduced hereinbelow :-

“In the application Exhibit-13 the complainant/petitioner has requested the Magistrate to issue summons to the Manager of Walchandnagar Co-operative bank, Branch Walchandnagar to produce 3 documents i.e. Stamp No. 3359, account extract of Saving Bank Account No. 6585, which is bank account of respondent no. 2 (accused no. 1), cheque no. 46633 with its encashment voucher for Rs. 13,947/- under which

accused no. 1 (respondent no. 2) allegedly disbursed the loan amount to the complainant.

The copy of stamp no. 3359 dated 24/09/1985 (page 105 of final report) is already collected by the Investigating Officer, who registered F.I.R. as per direction passed under Sec. 156(3) of Cr.P.C. and filed final report. So also the copy of Saving Bank Account No. 6585 is also produced on record (page 109 of final report). Only cheque no. 46633 has not been produced, but letter of the banker is produced (at page 207), wherein it is shown that cheque for Rs. 13,947/- was encashed and amount credited in the bank account of the complainant. In the statement of account no. 5359 of complainant's account maintained with Canara Bank shows credit entry dated 01/06/1987 of Rs. 13,947/-. Advocate for the petitioner submitted that this entry dated 01/06/1987 is regarding cheque issued by LIC and not of cheque no. 46633 issued by accused no. 1 and accused no. 1 falsely shown payment of Rs. 13,947/-. However, entry dated 01/06/1987 does not show that it is entry regarding cheque of LIC, but it shows credit entry of LCC (local cheque credit) entry no. 325.

The petitioner has sought issuance of summons to Nazir of Co-operative Court, Pune to produce copies of Award/judgments in Dispute Nos. 82/90 and 78/90. The complainant in para 14 of the complainant alleges that Dispute No. 78/90 has been disposed on 15/11/1996 and Dispute No. 82/90 has not been disposed of, but accused no. 1 attached copy of Award in Dispute No. 78/90 with Dispute No. 82/90 and by misleading the complainant and others has got recovered disputed loan amounts. The petitioner has produced copy of one letter with the revision application wherein Senior Clerk of the Co-operative Court informed to the complainant that the entry regarding disposal of Dispute No. 82/90 has not been taken in its disposal register. On the basis of such report, it is not possible to conclude that Dispute No. 82/90 has not been disposed of. In any case copy of

Dispute No. 78/90 is already produced on record and it is not case of the petitioner that those Awards are forged.

Further the complainant can obtain certified copies of those Awards from the concerned Court. It was submitted that the original record of both the proceedings are not available with the Co-operative Court. If it is so, then also there is no propriety to issue summons to the Nazir of the Court to produce the Awards and judgments in Dispute Nos. 78/90 and 82/90 as he would be unable to produce them for want of record. Therefore, in my view application Exhibit-13 seeking issuance of summons under Section 91 of Cr.PC. to produce the above documents is devoid of merit as such primary stage. Learned Trial Court in the order dated 05/12/2014 has rightly observed that no case was made out to call record as prayed at such primary stage of issuance of process.”

10. This Court finds no reason to interfere therewith. The petitioner may obtain certified copies of the public documents or statements of Bankers’ Book Account, if so available, and place them on record of the Trial Court.

11. Needless to mention that the pendency of proceedings before the Trial Court shall not be taken to be a stay to any of the proceedings, if any, initiated against the petitioner for recovery of the amount due from him under the Award.

12. In view of the above, the petition stands dismissed and disposed of accordingly.

(R. G. AVACHAT, J.)