2024:BHC-AUG:368-DB



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.789 OF 2023

Ravindra s/o. Manohar Agrawal ..Petitioner
Vs.
1. State of Maharashtra
2. Shri. Narayan Dhrupatrao Gadekar
3. Tapi Sahakari Pat Pedhi Ltd. ..Respondents

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Mr.Sanjeev B. Deshpande, Senior Advocate i/b. Mr.P.S.Gaikwad, Advocate for petitioner

Mr.A.R.Kale, Addl. Public Prosecutor for respondent no.1

Mr.S.S.Deve, Advocate h/f. Mr.T.R.Daware, Advocate for respondent no.3

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CORAM : R.G.AVACHAT AND SANJAY A. DESHMUKH, JJ.
RESERVED ON : DECEMBER 21, 2023
PRONOUNCED ON : JANUARY 03, 2024

ORDER *(PER R.G. AVACHAT. J.)* :-

Heard.

2. This Writ Petition has been filed with the following relief:-

> “Quash the Special Case No.31 of 2022, pending before learned District Court at Amalner arising out of FIR No.02/2011, registered in P.S.Chopda City, Jalgaon under Sections 406, 408, 409, 420, 422, 468, 471, 120-B read with Section 34 of Indian Penal Code and Section 3 of MPID Act and all consequential proceedings emanating therefrom against the petitioner.”

3. Respondent no.3 is a co-operative credit society. The FIR has been lodged by one Narayan Gadekar, Auditor of Co-operative Societies. He conducted audit of respondent no.3 – credit society for the period from 01.04.2007 to 31.03.2009. On having audited the accounts of the credit society, the informant realised the Chairman, members of the managing committee and borrowers to have indulged into fabricating false documents and sanction of hefty loans with inadequate or without security. The loan amounts have been utilised for the purpose other than for which the loans were sanctioned. Fictitious companies were formed by the relations of the Chairman and members of the managing committee (Directors). Crores of rupees of the credit society have, thus, been siphoned off. The Auditor, therefore, lodged FIR on 03.01.2011, detailing therein various loans transactions and the manner and *modus-operandi* of sanctioning of the loans and siphoning of loan amounts. The Auditor, then, gave a supplementary statement, stating therein some other such transactions, which were remained to be mentioned in the FIR. We do not propose to refer to all the averments in the FIR, since the matter in issue pertains only with one of such transactions.

4. It is alleged that the petitioner herein is a Director of M/s. Utkarsh Shelters and Estate Pvt. Ltd. He was sanctioned a loan of Rs.12 Crores. The Auditor found no date on the loan application of the petitioner. One Ranjana Patil and the daughter of the Chairman of the credit society have signed the application as guarantors to the loan. What kind of property was offered as security has not been mentioned in the application for loan. As such, very many columns in the loan application were found blank (not filled-in) The application for cash credit facility is dated 17.12.2005, while the loan was sanctioned on 23.09.2005, i.e. about three months before the application for cash credit facility. The Manager did not put any remark on the application so as to grant or refuse the cash credit facility. None of the office-bearers of the credit society scrutinised the said application. Receipt was not found acknowledging to have received a sum of Rs.15 crores towards loan. The loan amount was not utilised for the purpose for which it was sanctioned. Although it was observed that the loan was sanctioned against 100% security, same was found to be incorrect. No rules and regulations regarding grant of loan have been complied with. Only a small amount has been repaid. Same indicates that the

borrower/petitioner had dishonest intention. The loan was sanctioned by the Chairman and Members of the Managing Committee and was obtained by the petitioner only with a view to siphon off the loan amount. As on 31.03.2009, a sum of Rs.12 crores was outstanding on the loan account. Immovable properties of the relations of the Chairman have been given as security. It was, in short, an unsecured loan.

5. We have heard learned senior counsel. According to him, the entire loan amount has been repaid with interest at the rate agreed upon. Three documents of mortgage executed by the petitioner as security to the loan have been relied on. The total amount shown to have been secured under the mortgage is little over 12.5 crores. According to learned senior counsel, due to recession in the market, the petitioner could not repay initial installments of the loan. According to him, now, entire loan has been repaid. Our attention has been adverted to “no dues” certificate issued by the credit society. Learned senior counsel, ultimately, urged for allowing the petition.

6. Learned Addl. Public Prosecutor for the State would submit that the loan related documents were found to be incomplete

in very many respects. The properties of relations of the Chairman of the credit society were given as security. Had worth of the properties was Rs.360 crores, the petitioner would not have availed the loan facility. According to him, it was 3.6 crores and not 360 crores. The properties mortgaged did not stand in the name of the mortgagor. He would further submit that the amount has not been utilised for the purpose for which it was sanctioned. He, ultimately, urged for rejection of the application. He would further submit that money of small depositors has been siphoned off. They had to beg for refund of their deposits.

7. Learned counsel for respondent no.3 – credit society would submit that the Chairman and Members of the Managing Committee of the credit society are no longer in control of the affairs of the credit society. A newly elected body is in control. The credit society has been revived and is now running in profit. Learned counsel impliedly suggested for grant of relief to the petitioner herein.

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

9. The petitioner is a Director of M/s. Utkarsh Shelters and Estate Pvt. Ltd. He deals in real estate. He applied for loan of Rs.20 crores. He was, however, sanctioned loan of Rs.12 crores. The Chairman and the members of the managing committee (co-accused) are not before us. There are on record three documents of mortgage executed by the petitioner and concerned land owners. The total amount secured under those mortgage is little over Rs.12.5 crores. 7/12 extracts of the agricultural lands mortgaged as security, have also been on record indicating the lands to have been standing in the name of the mortgagors. There is, *prima facie*, nothing on record to indicate that the properties mortgaged were of lesser value and therefore, were grossly inadequate to secure the loan. Although the FIR was lodged in January, 2011, charge sheet has been filed in the year 2022, i.e. after about ten years of registration of the FIR. A sum of little over Rs.4 crores was repaid within first three years of sanctioning of the loan. Even, before filing of the charge sheet, the entire amount of loan along with interest at the rate at which it was sanctioned, has been repaid. The credit society has issued `no-dues certificate' indicating the entire loan amount with interest has been repaid in the year 2011. The charge

sheet has been filed eleven years after the loan account has been cleared. All these peculiar facts and circumstances lead us to grant the petitioner relief in the interest of justice.

10. In the result, the Writ Petition is allowed in terms of prayer clause (c).

**[SANJAY A. DESHMUKH, J.]** **[R.G. AVACHAT, J.]**

KBP