

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1248 OF 2024

Pimpalvad Mhalsa Vividh Karyakari
Seva Sahakari Society Ltd.
Office at : Pimpalvad Mhalsa,
Tal. Chalisgaon, Dist. Jalgaon,
Through its Chairman
Sunil Sukhdev Patil
Age : 50 years, Occ. Agriculture,
R/at : Pimpalvad Mhalsa,
Tal. Chalisgaon, Dist. Jalgaon.

..Petitioner

VERSUS

1. The State Of Maharashtra
Through Chief Secretary for the
State, Mantralay, Mumbai.
2. Ramchandra Babruvahan Patil
Age 59 years, Occ. Retired,
R/at : Umberkhed, Tal. Chalisgaon
Dist. Jalgaon

..Respondents

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Advocate for the Petitioner : Mr. Jadhav Yogesh Arun
APP for Respondent No.1/State : Mr. S.B. Pulkundwar

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 05, 2024

ORDER :-

1. Heard learned counsel for the petitioner.
2. Issue notice to the respondents.
3. Learned APP waives service of notice for the respondent
no.1/State.
4. A small issued has been raised by the petitioner that it is
a cooperative society, hence, entitled to receive the amount deposited

by respondent/accused. Respondent no.2 has misappropriated the amount. An inquiry under Section 88 of the Maharashtra Co-operative Societies Act ('M.C.S. Act' for short) was initiated against him and he was held liable to pay the so-called misappropriated amount. The petitioner has also obtained the recovery certificate from the Registrar, Co-operative Society. The said order is executable. However, the learned counsel for the petitioner approached the Judicial Magistrate First Class (Court No.1), Chalisgaon by an application below Exhibit-44 for withdrawal of amount of Rs.26,43,803/- deposited with the Court of Judicial Magistrate as per the order of this Court dated 19.07.2022 passed in Bail Application No.1660 of 2021.

5. The learned Judicial Magistrate rejected the prayer to allow him to withdraw the amount. The learned Magistrate has observed that perusing the bail order of this Court, it appears that it was a condition precedent for releasing him on bail and this Court did not direct about the management of the said amount. So, releasing such amount to the applicant will amount to go beyond the order of the Hon'ble Bombay High Court.

6. The question is should the amount directed to be deposited by respondent no.2 as a condition precedent for bail be allowed to be withdrawn by the complainant as recovery of dues.

7. Learned counsel for the petitioner would submit that non-applicant no.2 has no other property than the amount deposited with the Court. It would be very difficult to execute the recovery certificate. In these peculiar circumstances, if the amount is allowed to be withdrawn, the society may save its incorporation. Ultimately, it is a property of the complainant. Hence, the petition deserves to be allowed.

8. Learned APP would submit that the amount deposited by the accused was a condition precedent for bail. It was not an assurance by the Court for recovery of the amount as per the recovery certificate. The petitioner has a legal remedy to execute the recovery certificate under the M.C.S. Act.

9. The order of this Court granting bail dated 19.07.2022 to deposit the amount of Rs.26,43,803/- was a condition precedent for releasing him on bail. The law is well settled that it is not the duty of the Criminal Court to ensure the recovery of the amount due to the complainant or the decree holders. The Criminal Court has to pass appropriate judgment of conviction if the charges are proved beyond the reasonable doubt. No law restrains the complainant/decreed holder to proceed with the recovery of the so-called amount to be recovered from the accused. Since the amount deposited was a bail condition, it could not be said that it was a muddemal property, which may be released to the person entitled to receive on satisfying the

Court that he/she has a title over it. The alternate efficacious remedy is available to the petitioner to recover the amount as per the recovery certificate. Hence, the prayer of the petitioner to allow him to withdraw that amount as recovery of dues against the accused could not be considered. On this point, the learned Judicial Magistrate has recorded the correct finding. There is no substance in the matter. Hence, the petition stands dismissed in limine without notice to respondent no.2.

(S.G. MEHARE, J.)