2024:BHC-AUG:25896-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.1835 OF 2024
IN
CRIMINAL APPEAL NO.426 OF 2024

1. Dnyandeo Sabhaji Waphare
2. Sujata Dnyandeo Waphare .. Applicants

Versus

The State of Maharashtra .. Respondent

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Shri. R. N. Dhorde, Senior Advocate a/w. Shri. P. S. Dighe, Shri. S. P. Nimbalkar, Advocates i/by. Shri. V. R. Dhorde, Advocate for the Applicants

Shri. S. V. Hange, APP for the Respondent / State.

Shri. V. D. Sapkal, Senior Advocate i/by. Shri. V. H. Dighe a/w. Shri. R. N. Patil, Advocates for Assist to P.P.

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CORAM : R. G. AVACHAT AND NEERAJ P. DHOTE, JJ.

RESERVED ON : 15.10.2024
PRONOUNCED ON : 22.10.2024

FINAL ORDER (*Per* NEERAJ P. DHOTE, J.)

. This is the Application under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for Suspension of Sentence awarded by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 convicting the Applicants and Co-convicts for the offences punishable under Sections 177, 406, 409, 420, 465, 467, 471 r/w. Section 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and Section 120B of the I.P.C. and for the offence punishable under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short, 'MPID Act'). The Applicants are Sentenced to suffer Imprisonment for Life for the offence punishable under Sections 465, 467, 471 and 120B of the I.P.C. and term Sentences with fine for the other offences.

2. Heard the learned Senior Advocate for the Applicants, the learned A.P.P. for the Respondent / State and the learned Senior Advocate for the Liquidator / Sampada Nagari Sahakari Patsanstha Maryadit, Ahmednagar (hereinafter referred to as 'Patsanstha' for the sake of brevity). Perused the papers available on record.

3. It is the Prosecution's case, as can be seen from the Impugned Judgment that, the Patsanstha was registered as the financial institution on 23.02.2001. As on 31.03.2010, there were total 1047 members having shares valued at Rs.19,30,700/-. There were around 25008 depositors and deposits worth Rs.15 Crore and Odd. In addition to the said deposits, the Patsanstha was having deposits around Rs.39 Crore and Odd. The founder Chairman, Proprietors and Manager were the trustees. The Applicant No.1 - Dnyandeo Sabhaji Waphare was the Founder Member and the Chairman of the Patsanstha having Saving Account No.733. The Applicant No.2 – Mrs. Sujata Dnyandeo Waphare was the wife of Applicant No.1, who was the Vice Chairman of the Patsanstha having Saving Account No.2877. The Head Office of the Patsanstha was at Chitale road, Ahmednagar and having branches at different places. There were other office holders and employees of the

said Patsanstha. The Patsanstha, by resolution dtd.22.05.2011, resolved for conducting the statutory audit of the Patsanstha for the financial year 2009-2010. The Prosecution Witness No.20 – Devram Maruti Baraskar was appointed by the Competent Authority to conduct the same.

4. The said Auditor conducted the audit of the Patsanstha from 16.06.2011 to 08.07.2011. During the audit, he examined the documents of the Patsanstha at the head office and the branches. He prepared the Audit Report at Exh.994 stating that the Directors, Managers and certain Borrowers in collusion with each other committed misappropriation of funds of Patsanstha to the tune of Rs.13,38,55,667/- (Rs. Thirteen Crore Thirty Eight Lakh Fifty Five Thousand Six Hundred Sixty Seven). The Audit Report was submitted to the concerned authority under the Maharashtra Co-operative Societies Act (hereinafter referred to as the 'Societies Act'). On the basis of the said Audit Report, the Crime bearing CR No.266/2011 came to be registered with the Kotwali Police Station, Ahmednagar on 01.08.2011 for the offence punishable under Sections 177, 409, 417, 420, 465, 467, 468, 471, 120B of the I.P.C. and for the offence punishable under Section 3 of the MPID Act, alleging that many irregularities were done in the Patsanstha while distributing loans which were sanctioned to the relatives and friends without security and irregularities in distribution of loans against gold and there was misappropriation of funds of Depositors and there was violation of rules and regulations in distributing the loans to the

Borrowers.

5. On completion of the investigation, Charge-sheet came to be submitted and was registered as the above referred Sessions Case. The concerned authority under the Maharashtra Co-Operative Societies Act (hereinafter referred to as the 'Societies Act') suspended the Managing Committee of the Patsanstha and appointed Administrator by Order dated 06.09.2011 and directed the enquiry under Section 88 of the Societies Act and appointed the Enquiry Officer. On completion of the Trial, the Applicants along with the Charge-sheeted Accused came to be convicted and Sentenced by the impugned Judgment and Order.

6. It is submitted by the learned Senior Advocate for the Applicants that the Applicant No.1 was the Member of the Managing Committee from 2007 to 2012 and the Applicant No.2 was the Vice Chairman of the Patsanstha from 2002 to 2007. The Audit Report, which formed the basis to register the crime, was prepared without consideration of the relevant record. Therefore, the Applicants approached the District Deputy Registrar, Co-operative Societies, Ahmednagar with a request to conduct re-audit; however, the said request was rejected. Thereafter, the Hon'ble Minister for Co-operation, set aside the decision of the District Deputy Registrar, rejecting the request for re-audit and directed to conduct re-audit of the Patsanstha. Some of the depositors approached the Hon'ble Court challenging the order of the Hon'ble Minister directing re-audit.

6.1. He further submitted that this Hon'ble Court granted *status quo* to conduct the re-audit, however did not grant stay to the Order directing re-audit. The learned Trial Court shifted the burden on the Applicants to prove the documents, when it was for the Prosecution to prove the Charge. While attacking Audit Report on the ground that, it was submitted without a detailed inspection of the cash book, learned Senior Advocate contended that the Auditor upon whose Report the crime came to be registered, was removed from the panel of the Auditors. He further submitted that, though the Prosecution failed to prove the Charge against the Applicants, the learned Trial Court Sentenced them and that too imposed the Sentence of Imprisonment for Life, which will not stand the scrutiny of the law. There is no evidence that the gold loan transactions were sent for the approval of the Board of Directors, and even then the Applicants are held responsible. He took us through the evidence of Auditor to show that, even if his evidence is accepted, the Charge falls down. The property of the Applicants was attached and the Applicant No.1 has deposited Rs.1,00,00,000/- (Rs. One Crore) and the Applicant No.2 has deposited Rs.50,00,000/- (Rs. Fifty Lakh) before this Court in the civil Writ Petition pending before the learned Single Bench arising out of the enquiry under Section 88 of the Societies Act. He pointed towards various orders passed in previous litigations where the Applicants were the parties. He submits that, the Applicants be released on bail by Suspending their Sentence. He relied on the Judgment in **HDFC Securities Ltd and Ors** vs. **State of Maharashtra and Another, AIR 2017 SC 61** in support of his contention that, the Indian Penal Code, 1860, does not provide for vicarious liability for any offence alleged to be committed by a Company and therefore, the Managing Director or the Directors of the Company cannot be prosecuted in absence of provisions in the Indian Penal Code.

7. It is submitted by the learned Senior Advocate appearing for the Liquidator / Patsanstha that in the proceedings before the Hon'ble Minister, the Society was not made a party, though it was a necessary party. He further submits that, some of the Depositors approached this Hon'ble High Court against the order of the Hon'ble Minister for re-audit and this Hon'ble Court granted *ad interim stay*. The Applicants and others approached the Divisional Joint Registrar of the Co-operative Societies, wherein the Appeal was partly allowed and newly appointed Enquiry Officer was directed to conduct and complete the enquiry under Section 88 of the Societies Act within the stipulated period. As on date, the enquiry under Section 88 of the Societies Act is intact as there is no stay to the Order dated 11.12.2018 passed by the Hon'ble Minister in Revision Application No.294/2018, confirming the enquiry report submitted under Section 88 of the Societies Act. He further submitted that the evidence cannot be reappreciated at this stage. He further submitted that the Applicant No.1 is a political person and he is managing the affairs of the Patsanstha and he has been the

Founder Director of the Patsanstha and if the Applicants are granted bail, wrong message will go in the public. He submitted that the Application be rejected. In support of his contention, he relied on the decision in **Omprakash Sahni V/s. Jai Shankar Chaudhary & Anr., 2023 DGLS (SC) 509**.

8. It is submitted by the learned APP for the State that he adopts the submissions made by the learned Senior Advocate appearing for the Liquidator / Patsanstha.

9. We have considered the submissions of both the sides. In the Judgment relied upon by the learned Senior Advocate appearing for the Liquidator / Patsanstha, the Hon'ble Apex Court while considering the aspect of Suspension of Sentence under Section 389 of the Code of Criminal Procedure, 1973, by taking into account previous judgments, observed as follows :

> "*the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Couwrt can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.*"

10. Coming to the matter at hand, there is no dispute that the Applicants were the Directors and for some time in the Managing Committee of the said Patsanstha. The case is entirely based on the Audit Report of the Patsanstha, which was prepared by the Auditor, who was examined as PW20 - Devram Maruti Baraskar. His evidence is crucial. The learned Trial Court was of the view that, though the Government was not satisfied with the Audit done by PW20 - Deoram Maruti Baraskar and ordered re-audit, the same was not done and though the Accused were on bail, they did not get exonerate themselves nor government withdrew the Prosecution against them. As seen from the submissions of the learned Senior Advocates, direction for re-audit was the subject matter of the litigation and interim order was operating in the litigation.

11. What is further seen from the evidence of PW20 - Deoram Maruti Baraskar is that, though the Branch Manager was supposed to place the proposal before the Board of Directors for financial approval, he did not submit the details of the gold loan proposals to the Board of Directors for post-sanction. The learned Trial Court came to the conclusion that the Applicants i.e. Board of Directors, ultimately, did not accord sanction to the loan so as to put blame on Accused Nos.12 and 13 who were the Managers. This shows that, there was no sanction to the loan by the Board of Directors. The said witness, who is the Star Witness of Prosecution shows that, wrong figures were shown in the

FIR. He gave vital admissions in the cross-examination. It is further seen that, the Auditor did not specifically mention the name of the persons, who sanctioned the gold loans, either in the Audit Report or in the Report. The learned Trial Court has heavily relied on the evidence of the Auditor. The evidence shows that there were 12 (twelve) branches of the Patsanstha and he completed audit of each branch in 1 (one) day i.e. in total 10 (ten) days i.e. from 16.06.2011 to 08.07.2011. His evidence shows that, the Government observed in its order that, he did not carry out the audit property. His evidence shows that though the audit period was from 2009 to 2010, he went on to examine the entries beyond that period.

12. The Applicant No.1 has deposited Rs.1,00,00,000/- (Rs. One Crore) by selling his property which was attached in the proceedings, by approaching the Single Bench. The Applicant No.2 has deposited Rs.50,00,000/- (Rs.Fifty Lakh) in the said civil proceedings pending before the Single Bench. The properties of the Applicants are attached by the official liquidator. The Applicant No.2, a woman, was on pre-arrest bail throughout and vide interim order dated 10.05.2024 her Sentence was Suspended and she was granted interim bail which is continued till date. The Sentence of Imprisonment for Life, *prima facie* appears to be disproportionate. The Appeal would take its own time and there is no possibility that the Appeal would be heard in the near

future. Thus, in the backdrop of the facts and circumstances as against the Applicants and above discussion, we are inclined to Suspend the Sentence imposed on the Applicants by the learned Trial Court till decision of the Appeal. Hence, we proceed to pass the following order.

ORDER

(i) The Criminal Application is allowed.

(ii) The substantive Sentence imposed by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 on the Applicant No.1 namely Dnyandeo Sabhaji Waphare, is suspended during the pendency of the present Appeal.

(iii) Applicant No.1 namely Dnyandeo Sabhaji Waphare be released on bail on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand Only], with one or more surety / sureties, in the like amount.

(iv) The Interim Order dated 10.05.2024 Suspending the Sentence of Applicant No.2 namely Sujata Dnyandeo Waphare is hereby confirmed on the same terms and conditions mentioned in the Interim Order.

(v) Bail before the Trial Court.

(vi) The Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.) **(R. G. AVACHAT, J.)**

GGP